

_____ BILL NO. _____

INTRODUCED BY _____

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A STATEWIDE, GENERAL, RETAIL SALES AND USE TAX; PROVIDING FOR EXEMPTIONS FROM THE SALES TAX AND USE TAX; PROVIDING FOR VARIOUS NONTAXABLE TRANSACTIONS; PROVIDING PENALTIES FOR CERTAIN ACTS OR OMISSIONS; PROVIDING FOR THE ALLOCATION OF SALES TAX AND USE TAX REVENUE; STATUTORILY APPROPRIATING SALES TAX AND USE TAX REVENUE FOR ADMINISTRATION OF THE SALES TAX AND USE TAX; REQUIRING THE DEPARTMENT OF REVENUE TO PURSUE BECOMING A SIGNATORY TO THE STREAMLINED SALES AND USE TAX AGREEMENT; ELIMINATING THE MONTANA INDIVIDUAL INCOME TAX; ELIMINATING CERTAIN CREDITS AGAINST THE MONTANA INDIVIDUAL INCOME TAX; AMENDING SECTIONS 5-12-303, 7-13-308, 7-14-1133, 7-14-1636, 7-34-2416, 13-37-218, 15-1-101, 15-1-102, 15-1-205, 15-1-206, 15-1-208, 15-1-211, 15-1-302, 15-1-501, 15-1-503, 15-2-201, 15-2-302, 15-30-163, 15-30-164, 15-30-246, 15-30-1101, 15-30-1102, 15-30-1112, 15-30-1113, 15-30-1121, 15-31-102, 15-31-113, 15-31-131, 15-31-150, 15-31-161, 15-31-162, 15-32-102, 15-32-104, 15-32-106, 15-32-303, 15-32-402, 15-32-403, 15-32-404, 15-32-405, 15-32-502, 15-32-503, 15-32-505, 15-32-510, 15-32-602, 15-32-610, 15-33-106, 15-50-207, 15-61-204, 15-62-208, 15-63-202, 17-6-311, 17-6-316, 17-6-602, 17-7-111, 17-7-502, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 19-50-101, 20-25-503, 20-25-504, 33-27-101, 33-27-102, 33-27-103, 37-4-104, 39-51-1109, 39-51-1301, 39-51-2402, 53-2-211, 67-11-303, 87-2-102, 87-2-105, 87-5-121, AND 90-8-202, MCA; REPEALING SECTIONS 2-18-1312, 15-1-230, 15-1-231, 15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-106, 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-124, 15-30-125, 15-30-126, 15-30-127, 15-30-128, 15-30-129, 15-30-130, 15-30-131, 15-30-132, 15-30-134, 15-30-135, 15-30-136, 15-30-137, 15-30-138, 15-30-141, 15-30-142, 15-30-143, 15-30-144, 15-30-145, 15-30-146, 15-30-147, 15-30-148, 15-30-149, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-155, 15-30-156, 15-30-157, 15-30-161, 15-30-162, 15-30-165, 15-30-166, 15-30-167, 15-30-168, 15-30-171, 15-30-172, 15-30-173, 15-30-174, 15-30-175, 15-30-176, 15-30-177, 15-30-178, 15-30-179, 15-30-180, 15-30-181, 15-30-186, 15-30-188, 15-30-189, 15-30-190, 15-30-191, 15-30-192, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-208, 15-30-209, 15-30-210, 15-30-215, 15-30-241, 15-30-247, 15-30-248, 15-30-249, 15-30-250, 15-30-251, 15-30-255, 15-30-256, 15-30-257, 15-30-301,

1 15-30-302, 15-30-303, 15-30-304, 15-30-305, 15-30-306, 15-30-307, 15-30-310, 15-30-311, 15-30-312,
2 15-30-313, 15-30-314, 15-30-316, 15-30-321, 15-30-323, 15-30-324, 15-30-331, 15-30-601, 15-30-602,
3 15-30-603, 15-30-604, 15-30-605, 15-30-1111, 15-31-170, 15-32-109, 15-32-115, 15-32-201, 15-32-202,
4 15-32-203, 15-61-202, AND 15-62-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
5 APPLICABILITY DATES."

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8
9 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 20], unless the context clearly
10 indicates otherwise, the following definitions apply:

11 (1) "Business entity" means an individual, partnership, corporation, corporate division, joint stock
12 company, or any other association or entity, public or private, or separate business unit of any individual,
13 partnership, corporation, corporate division, joint stock company, or any other association or entity.

14 (2) "Certified automated system" means software certified jointly by the states that are signatories to
15 the Streamlined Sales and Use Tax Agreement to calculate the tax imposed by each jurisdiction on a
16 transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the
17 transaction.

18 (3) "Certified service provider" means an agent certified jointly by the states that are signatories to the
19 Streamlined Sales and Use Tax Agreement to perform all of the seller's sales tax or use tax functions.

20 (4) "Closely held subsidiary corporation" means:

21 (a) a corporation in which the parent corporation owns stock possessing at least 80% of the total
22 combined voting power of all classes of stock entitled to vote and owns at least 80% of the total number of
23 shares of all other classes of stock; or

24 (b) a business entity if:

25 (i) sold to a purchaser of all or not less than 80% of the value of all of the assets that are located in this
26 state of the business entity; and

27 (ii) the purchaser continues to use the tangible personal property in the operation of an ongoing business
28 entity in this state.

29 (4) "Contractor" means:

30 (a) a person who has an agreement with the owner or lessee of real property in this state to perform

1 services or furnish materials and services for the construction, alteration, improvement, or repair of real property
2 in this state;

3 (b) a person who acts on behalf of the owner or lessee of real property in this state to arrange for the
4 furnishing of services or the furnishing of materials and services for the construction, alteration, improvement,
5 or repair of real property in this state; or

6 (c) a person who owns or leases real property in this state for the purpose of developing the property
7 and who, in the development of the property, alters or makes improvements to the property or contracts for the
8 alteration or improvement of the property.

9 (5) "Delivery charge" means a charge by the seller for preparation and delivery to a location designated
10 by the purchaser of personal property or services, including but not limited to transportation, shipping, handling,
11 postage, crating, and packing.

12 (6) "Manufactured home" means a residential dwelling built in accordance with the federal Manufactured
13 Home Construction and Safety Standards that is more than 8 1/2 feet in width and that is designed, constructed,
14 and equipped as a dwelling place or place of business to which wheels may be attached for movement upon
15 streets or highways.

16 (7) "Modular home" means a residential dwelling constructed in a factory to a residential construction
17 code other than the federal Manufactured Home Construction and Safety Standards.

18 (8) "Nonresident contractor" means a contractor who has not been a bona fide resident of this state for
19 at least 1 year prior to bidding upon or entering into a construction contract.

20 (9) "Nonresident subcontractor" means any subcontractor who has not been a bona fide resident of this
21 state for at least 1 year prior to bidding upon or entering into a construction contract.

22 (10) "Population" means the population as determined by the last federal census, to become effective
23 on the July 1 following the receipt of the official census figures.

24 (11) "Prebuilt home" means any residential dwelling that is wholly or in substantial part made, fabricated,
25 formed, or assembled in manufacturing facilities for installation or assembly on a building site. A prebuilt home
26 includes but is not limited to a manufactured home, modular home, and mobile home.

27 (12) "Real property" means land and any appurtenances or structures affixed to the land. An article is
28 considered real property if:

29 (a) it is buried or embedded;

30 (b) it is physically or constructively annexed to the real property;

1 (c) it is adapted to the use of the real property; or

2 (d) considering the purpose for which the annexation was made, it can reasonably be inferred that the
3 intent of the annexing party to was to make the article a permanent part of the real property.

4 (13) "Retail sale" means the sale, lease, rental, or use of tangible personal property for storage, use,
5 or consumption or for any purpose other than for resale, sublease, or subrent.

6 (14) "Sale" means the transfer of title or possession for storage, use, or other consumption in this state
7 for a consideration, including the fabrication of tangible personal property if the materials are furnished by the
8 purchaser. The term excludes an exchange or transfer of tangible personal property upon which the seller has
9 directly or indirectly paid sales tax or use tax incidental to:

10 (a) a division of partnership assets among the partners according to their interests in the partnership
11 or a limited partnership;

12 (b) the formation of a corporation by the owners of a business and the transfer of the owners' business
13 assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in
14 proportion to assets contributed;

15 (c) the transfer of assets of shareholders in the formation or dissolution of a professional corporation;

16 (d) the dissolution and the pro rata distribution of the corporation's assets to its stockholders;

17 (e) the transfer of assets from a parent corporation to a closely held subsidiary corporation if the transfer
18 is solely in exchange for stock or securities of the closely held subsidiary corporation;

19 (f) the transfer of assets from a closely held subsidiary corporation to a parent corporation or to another
20 closely held subsidiary corporation if the transfer is solely in exchange for stock or securities of the parent
21 corporation or the closely held subsidiary corporation that received the assets;

22 (g) a transfer of a partnership interest;

23 (h) the formation of a partnership by the transfer of assets to the partnership or transfers to a partnership
24 in exchange for proportionate interests in the partnership;

25 (i) the repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

26 (j) the transfer of assets between:

27 (i) a parent corporation and a closely held subsidiary corporation of the parent;

28 (ii) closely held subsidiary corporations of the same parent corporation; or

29 (iii) affiliated companies, partnerships, and corporations that are owned in similar percentages by the
30 same persons.

(15) (a) "Sales price" applies to the measure subject to sales tax or use tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, rented, or valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) the seller's cost of property sold;
- (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, and any other expense of the seller;
- (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (iv) delivery charges;
- (v) installation charges;
- (vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) The term excludes the actual trade-in value allowed on tangible personal property and manufacturer rebates for motor vehicles exchanged at the time of the transaction.

(c) The term does not include:

- (i) discounts, including cash, terms, or coupons that are not reimbursed by a third party or are allowed by a seller and taken by a purchaser on a sale;
- (ii) interest, financing, or carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
- (iii) any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(16) "Sales tax" means the tax imposed under [section 3].

(17) "Subcontractor" means a person who has an agreement with a contractor or another subcontractor to perform any part of the contractor's or other subcontractor's obligation for furnishing services or materials for the construction, alteration, improvement, or repair of real property in this state.

(18) "Surety bond" means a bond or undertaking executed by a surety company authorized to do business in this state.

(19) "Tangible personal property" means any property that is not real or intangible and includes any

1 controlled substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2, that is not
2 sold pursuant to a written prescription of or through a licensed practitioner, as defined in 37-14-102.

3 (20) "Taxpayer" means the purchaser of tangible personal property, admissions, or services that are
4 subject to taxation under [sections 1 through 12].

5 (21) "Tertiary production" means the crude oil recovered from a petroleum reservoir by means of a
6 tertiary enhanced recovery project to which one or more tertiary enhanced recovery techniques meeting the
7 certification requirements of the Montana board of oil and gas conservation or the United States government
8 are being applied.

9 (22) "Transportable home" means a manufactured home, modular home, or prebuilt home.

10 (23) "Use tax" means the tax imposed under [section 3].

11 (24) "Vendor" means any person engaged in the business of selling at retail or wholesale tangible
12 personal property, admissions, or services that are subject to taxation under [sections 1 through 12]. The term
13 includes a vehicle dealer licensed under Title 61, chapter 4.

14 (25) "Well site" means an area within a 250-foot radius of an oil or gas wellbore.

15 (26) "Wholesale sale" means a sale of tangible personal property or services for subsequent sale.

16
17 **NEW SECTION. Section 2. Short title -- administration -- confidentiality.** (1) [Sections 1 through
18 12] may be cited as the "Selective Sales Tax and Use Tax Act of 2003".

19 (2) The department shall administer the provisions of [sections 1 through 12].

20 (3) The department may provide for the issuance, affixing, and payment of revenue stamps or the
21 issuance of tokens or other devices to more efficiently secure the payment and collection of and accounting for
22 taxes imposed by [sections 1 through 12].

23 (4) A notice required to be mailed by the department under [sections 1 through 12] is sufficient if mailed
24 to the address shown on the records of the department.

25 (5) (a) It is unlawful for an employee of the department or any other public official or public employee
26 to divulge or otherwise make known information that is disclosed in a report or return required to be filed under
27 [sections 1 through 12] or information that concerns the affairs of the person making the return and that is
28 acquired from the person's records, officers, or employees in an examination or audit. This subsection may not
29 be construed to prohibit the department from publishing statistics if they are classified in a way that does not
30 disclose the identity and content of any particular report or return. A person violating the provisions of this section

1 is subject to the penalty provided in 15-31-511.

2 (b) The department may allow the following:

3 (i) delivery to the taxpayer or the taxpayer's legal representative upon written request of a copy of any
4 return or report in connection with the taxpayer's tax return;

5 (ii) inspection by the attorney general of the report or return of a person who brings an action against
6 the state or against whom an action is contemplated or has been instituted by this state;

7 (iii) introduction into evidence of any report or return or information from a report or return in any
8 administrative or proceeding to which the taxpayer is a party;

9 (iv) furnishing of information to the United States government, the District of Columbia, any state allowing
10 similar privileges to the department, or to the multistate tax commission for relay to tax officials of cooperating
11 states. Information furnished under this subsection (5)(b)(iv) may be used only for tax purposes.

12 (v) sharing of information with local government entities or other state agencies.

13 (c) The department shall provide all information requested by the legislative audit division, the legislative
14 fiscal division, or legislative services division, provided the requesting division agrees to the confidentiality
15 provisions of 15-31-511.

16 (d) The following are prohibited:

17 (i) failure or refusal to make a return or payment required by [sections 1 through 12];

18 (ii) making a false return or statement;

19 (iii) evading the payment of any tax due;

20 (iv) aiding or abetting another person in an attempt to evade payment of the tax due; or

21 (v) knowingly attesting to a false or fraudulent return.

22 (e) The district court of the county in which a violation of this subsection (5) is alleged to have occurred
23 has jurisdiction over the alleged violation.

24
25 **NEW SECTION. Section 3. Imposition of sales tax or use tax -- rate.** (1) Except as provided in
26 subsections (3) and (4), there is imposed a tax of 4% upon the following:

27 (a) the sales price of every retail sale of tangible personal property in this state;

28 (b) the gross rental paid for the lease or contract transferring possession of tangible personal property
29 if the transfer of possession would be taxable if the property was sold;

30 (c) the sales price paid for:

1 (i) intrastate telephone and telegraph services, including the consideration paid for the rental or leasing
2 of any equipment or services incidental to the services; and

3 (ii) intrastate calls that originate and terminate in a single state and are billed to a customer with a place
4 of primary use in this state from mobile telecommunications services as provided by the Mobile
5 Telecommunications Sourcing Act, 4 U.S.C. 116 through 126;

6 (d) the sales price paid to carriers for intrastate transportation of passengers;

7 (e) the sales price paid to public utilities, as defined in 69-3-101, or to a person who sells oil, natural gas,
8 or electricity for domestic, industrial, or commercial consumption;

9 (f) the sales price paid for storing, using, or consuming tangible personal property; and

10 (g) the sales price of computer hardware, including the basic set of operating instructions called system
11 software that is necessary to the basic operation of the computer hardware, and hardware media used to transfer
12 computer software programs.

13 (2) For the purposes of subsection (1)(c), the definitions and provisions of the Mobile
14 Telecommunications Sourcing Act apply.

15 (3) (a) The tax imposed under subsection (1) of this section must be indexed according to the formula
16 in subsection (3)(b).

17 (b) If, not later than March 31 of any year, the governor certifies that the unappropriated general fund
18 balance at the end of the current fiscal year, minus any expected shortfall in revenue, if any, to fully fund the
19 state's portion of the elementary and high school BASE funding program for the following school fiscal year, will
20 exceed \$35 million, the tax must be reduced to 0.5% effective July 1 immediately following certification.

21 (4) Upon the governor's certification under subsection (3), the department shall reduce the rate of tax
22 imposed under subsection (1) to 0.5%.

23 (5) The tax imposed by [sections 1 through 12] is in addition to all other licenses and taxes provided
24 by law.

25 (6) The tax rate imposed upon a transaction subject to the Uniform Sales and Use Tax Administration
26 Act must be consistent with the uniform sourcing rule provided in the Streamlined Sales and Use Tax
27 Agreement.

28
29 **NEW SECTION. Section 4. Exemptions.** (1) The sales or leases described this section are exempt
30 from the tax imposed by [sections 1 through 12].

1 (2) Sales of services and tangible personal property that this state is prohibited from taxing under the
2 law or constitution of the United States or the law or constitution of this state is exempt.

3 (3) Sales of services and tangible personal property exempt under this section include but are not
4 limited to:

5 (a) interstate transportation of freight or passengers;

6 (b) the sale of railroad rolling stock, including locomotives purchased by interstate railroads, aircraft
7 purchased by interstate air carriers that are holders of valid United States civil aeronautics board permits or
8 authorities, and trucks, truck tractors, trailers, semitrailers, and passenger buses in excess of 10,000 pounds
9 gross vehicle weight that are purchased by common or contract interstate carriers or that are operating in
10 interstate commerce under exemption clauses in federal law if the truck, truck tractor, trailer, semitrailer, or
11 passenger bus in excess of 10,000 pounds gross vehicle weight is used in interstate commerce;

12 (c) the lease of a motor vehicle, with or without a trailer, if the lease is computed from the gross receipts
13 of the operation and the operator is operating under a valid interstate authority or permit;

14 (d) a sale to joint apprenticeship and training programs approved by the United States department of
15 labor;

16 (e) to comply with the Food Security Act of 1985, sales of food purchased with food stamps; and

17 (f) the sale of food purchased under the special supplemental food program for women, infants, and
18 children as specified in 42 U.S.C. 1786.

19 (4) For the purpose of exempting sales of services and tangible personal property consumed in
20 production, the following are exempt:

21 (a) the sale of tangible personal property to a person engaged in the business of manufacturing,
22 processing, or compounding when the tangible personal property purchased becomes an ingredient or
23 component of the tangible personal property manufactured, processed, or compounded for sale or use and the
24 sale of containers, labels, or shipping cases used for the tangible personal property manufactured, processed,
25 or compounded. This subsection applies to chemicals and catalysts used directly in manufacturing, processing,
26 or compounding that are consumed or destroyed during that process.

27 (b) the sale of:

28 (i) livestock;

29 (ii) feeds for use in feeding livestock or poultry for marketing purposes;

30 (iii) seeds, roots, bulbs, and small plants;

1 (iv) fertilizer applied to land; and

2 (v) the products of the planting or fertilizing to be sold. The exemption provided in this subsection (4)(b)
3 applies to but is not limited to the sale of seeds, roots, bulbs, and small plants planted in and fertilizer applied
4 to land subject to a state or federal crop set-aside program;

5 (c) the sale of intrastate transportation of raw farm products to processing or manufacturing plants;

6 (d) the sale of power or fuel to a person engaged in the business of manufacturing, processing, or
7 agriculture if the power or fuel is consumed directly in manufacturing, processing, or agriculture;

8 (e) the sale of power or fuel to a person engaged in the transportation business if the power or fuel is
9 consumed directly in generating motive power for actual transportation purposes, except power or fuel that is
10 not taxed as gasoline, gasohol, or special fuel under Title 15, chapter 70, if the power or fuel is used to propel
11 a motor vehicle, as defined in 61-1-102;

12 (f) all wholesale sales of a controlled substance designated as a dangerous drug pursuant to Title 50,
13 chapter 32, parts 1 and 2, that is not sold pursuant to a written prescription of or through a licensed practitioner,
14 as defined in 50-32-101; and

15 (g) the sale of fuel for use as boiler fuel in the production of electricity.

16 (5) For the purpose of exempting the sale of services and tangible personal property sold to
17 government, a charitable or nonprofit organization, an irrigation district, or a district established to control weeds,
18 mosquitoes, or other pests, the following are exempt:

19 (a) all sales to this state or a political subdivision of this state;

20 (b) all sales made to religious organizations and nonprofit organizations that provide meals or services
21 to senior citizens in or for the conduct of the regular religious, charitable, or senior citizen functions and activities;

22 (c) all sales of meals made to persons in the regular conduct of senior citizen center functions and
23 activities;

24 (d) occasional sales made by religious or charitable organizations for fundraising purposes for the
25 conduct of regular religious or charitable functions and activities and not in the course of any regular business.

26 For the purposes of this subsection (5)(d), "regular business" means the habitual or regular activity of the
27 organization, excluding any incidental or occasional operation.

28 (e) the sales price of admission to and user fees for publicly owned recreational facilities, such as
29 swimming pools, athletic facilities, and recreation centers; and

30 (f) labor or service charges, including transportation and travel, for the repair, alteration, or improvement

1 of real property or tangible personal property that is owned by or incorporated in projects under contract to this
2 state or any of its political subdivisions.

3 (6) For the purpose of exempting sales of services and tangible personal property that are alternatively
4 taxed, the following are exempt:

5 (a) the sale of a transportable home after the tax has been paid once;

6 (b) the sale of gasoline, gasohol, or special fuels taxed under Title 15, chapter 70.

7 (7) For the purpose of exempting sales of services and tangible personal property that are essential
8 human goods and services, the following are exempt:

9 (a) intrastate transportation of sick, injured, or deceased persons by ambulance or hearse;

10 (b) the sale of:

11 (i) prescription drugs for human relief, insulin for human relief, and any syringe, needle, or other device
12 necessary for the administration of a prescription drug or insulin; and

13 (ii) oxygen and oxygen concentrators for medical use, blood plasma, prosthetic devices, hearing aids,
14 crutches, wheelchairs, eyeglasses, and contact lenses;

15 (c) the sale of all noncapitalized equipment and disposable supplies that are used in the direct medical
16 or dental care of a patient. The exemption in this subsection (7)(c) does not include capitalized equipment or
17 office supplies used in the normal course of business.

18 (d) the sale of water delivered by pipeline or truck.

19 (8) For the purpose of exempting sales of services provided primarily to businesses, the following are
20 exempt:

21 (a) interstate or intrastate transportation of drilling rigs, including charges for the movement or
22 conveyance of the drilling rig to or away from the well site, and the loading, unloading, assembly, or disassembly
23 of the drilling rig; and

24 (b) the foreclosure upon a lien or the repossession of a motor vehicle on which an action is filed.

25 (9) For the purpose of exempting sales of services and tangible personal property as an economic
26 incentive, the following are exempt:

27 (a) intrastate transportation of:

28 (i) employees to or from work if the transportation is paid or contracted for by the employee or employer;
29 and

30 (ii) freight and property, including oil and natural gas by pipeline;

(b) the sale of the services of professional engineers, geologists, or members of similar professions, including the sales price paid for all services to real or tangible personal property leading to building location, drilling, and all related activities that must be completed prior to setting the production casing, including coring, logging, and testing done prior to the setting of production casing for the drilling of any oil or gas well. The exemption in this subsection (9)(b) also applies to seismographic and geophysical surveying, stratigraphic testing, coring, logging, and testing calculated to reveal the existence of geologic conditions favorable to the accumulation of oil or gas.

(c) the sale of school yearbooks and newspapers;

(d) the sale of carbon dioxide and other gases used in tertiary production;

(e) the sale of lodging services provided by a person known to the trade and public as a licensed guide or outfitter, including but not limited to sleeping accommodations, placement of tents, snow shelters, base camps, temporary structures that are dismantled or abandoned after use, and all other forms of temporary shelter;

(f) the sale of farm implements. For purposes of this subsection (9)(f), "farm implements" means tractors or other machinery designed or adapted and used exclusively for agricultural operations and specifically excludes snowmobiles, lawn tractors, all-terrain vehicles, and the repair of or replacement parts for farm implements.

(g) the sale or lease of an aircraft and the tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts and the sale of all services used for aircraft repair, remodeling, and maintenance services if the services are performed on an aircraft or an aircraft engine or on the component materials or parts of an aircraft or aircraft engine. For purposes of this subsection (9)(g), "aircraft" means aircraft used in a scheduled interstate federal aviation administration air carrier operation.

(h) the sale of the service of transmitting radio waves to a one-way paging unit owned or rented by a service subscriber, if the messages received are displayed or played on a paging unit as voice, tone and voice, numeric, or alphanumeric, including mail services purchased with the pager.

(10) The department shall review the exemption provided under subsections (9)(b) and (9)(g), analyze the benefit for the state, and report to the revenue and transportation interim committee on or before December 1, 2004.

(11) For the purpose of avoiding application of the sales tax or use tax more than once on the same

1 article of tangible property for the same taxpayer, the trade-in value of tangible personal property must be
2 excluded from the sales price of new tangible personal property whenever trade-in and purchase occur in the
3 same transaction.

4
5 **NEW SECTION. Section 5. License -- fee -- penalties.** (1) Every vendor shall obtain from the
6 department a sales tax license to conduct business in this state. An out-of-state vendor not otherwise subject
7 to [sections 1 through 12] may apply for a license from the department and shall collect and remit the state sales
8 tax or use tax imposed by [section 3].

9 (2) A sales tax license may be granted only upon application stating the name and address of the
10 applicant, the character of the business in which the applicant proposes to engage, the location of the proposed
11 business, and other information that the department requires.

12 (3) A license fee of \$60 must be paid by each new vendor, except a remote vendor that is not required
13 to register in this state and that is using a certified automated system or a certified service provider. Failure of
14 a vendor to file a return when due may result in forfeiture of the sales tax license. The department shall charge
15 \$60 for reinstating a forfeited license.

16 (4) A separate license is required for each place of business.

17 (5) Each license must be uniquely numbered and must:

18 (a) contain the name and residence of the licensee;

19 (b) indicate the place and character of the business of the licensee; and

20 (c) be posted in a conspicuous place at the place of business for which it is issued.

21 (6) A license is not transferable.

22 (7) A person who discontinues business shall notify the department, return the sales tax license for
23 cancellation, and preserve all business records in this state until the department issues a receipt showing that
24 all taxes due from the person have been paid.

25 (8) A license issued under this section is valid unless revoked by the department.

26 (9) (a) The department may, after providing notice and an opportunity for a hearing, revoke the license
27 of a vendor violating any provision of [sections 1 through 12].

28 (b) The department may not issue a new sales tax license to the vendor unless the vendor applying for
29 the license has filed with the department:

30 (i) a license application; and

(ii) all past-due returns, if any, and remitted in full all taxes and, if any, penalties and interest due.

(10) The department may, after providing notice and an opportunity for a hearing, suspend the license of a vendor who violates any provision of [sections 1 through 12] until the vendor is in compliance with the provisions of [sections 1 through 12].

(11) Notwithstanding subsection (1) and pursuant to department rules, a vendor that purchases wholesale goods for use in manufacturing, processing, or compounding as provided in [section 4] and that does not engage in the retail sale of goods and services is not required to obtain a sales tax license.

(12) The department may enter into a licensing agreement with an entity that is not otherwise required to obtain a license under [sections 1 through 12] and that has one or more independent sales contractors working in this state. An entity licensed pursuant to this subsection shall collect and remit the tax imposed under [sections 1 through 12] on all taxable sales transactions occurring between entities and the independent sales contractor. An entity licensed under this subsection is subject to all collection and enforcement provisions imposed by [sections 1 through 12].

NEW SECTION. **Section 6. Compliance -- collection procedures.** (1) (a) Each vendor shall on or before the last day of each month file a return showing the preceding month's gross sales and remit all taxes due under [sections 1 through 12] to the department.

(b) The return must contain the information and be made in the manner prescribed by rule by the department.

(2) The department may, for good cause, allow an extension for filing a return and paying the taxes, but an extension may not be for more than 90 days.

(3) If the total tax to be remitted by a vendor during any month is less than \$150 and the department has agreed in writing, the taxpayer may file the return and remit the tax collected quarterly or annually. A return made under this subsection must be filed and the collected taxes remitted on or before the last day of the month following the end of the quarter or year for which the tax is collected.

(4) If the accounting methods regularly used by a vendor are such that reports of sales made during a calendar month would impose an unnecessary hardship, the department may, after receiving a formal request filed by the vendor, accept reports at intervals more convenient to the vendor.

(5) A person that purchases goods or services taxable under [sections 1 through 12] that does not pay to the vendor the tax owed shall, on or before the last day of each month, file a return showing the gross

1 purchases made by the person on which the tax due was not paid during the preceding month and remit all taxes
2 due to the department. The return must contain the information required by and be made on a form provided
3 by the department.

4 (6) Every person liable for collecting and remitting sales taxes or use taxes under [sections 1 through
5 12] shall preserve for 3 years, at the person's principal place of business, all records necessary to determine the
6 amount of tax for which the person is liable under [sections 1 through 12]. The records required under this
7 subsection must be available for examination by the department during regular business hours or as arranged
8 by mutual consent of the person and department.

9 (7) If a person liable for collecting and remitting sales taxes or use taxes under [sections 1 through 12]
10 fails to comply with subsection (6), the person bears the burden of proof in a challenge to the correctness of any
11 assessment of taxes imposed by the department for the period for which records were not preserved.

12 (8) If a vendor fails to file a return as required by [sections 1 through 12], the department shall give
13 written notice by mail to the vendor to file a return on or before the last day of the month following the notice of
14 delinquency. If the vendor, subsequent to the notice, fails or refuses to file a return, the department shall make
15 a return from the best information available. A return made by the department is considered to be correct, and
16 the tax due is a deficiency and is subject to penalties and interest as provided under [sections 1 through 12].

17 (9) The department shall preserve returns and reports for 3 years.

18 (10) A vendor that ceases to engage in business shall file a return within 30 days after discontinuing or
19 selling the business.

20 (11) Taxes collected under subsections (15) and (16) are due and payable and must be remitted in full
21 by the county treasurer to the department monthly or as required by the department, together with reports
22 required by the department.

23 (12) When applying for registration, every new owner of a motorcycle shall produce either:

24 (a) a receipt from the department showing that the sales tax or use tax has been paid;

25 (b) a receipt on forms provided by the department showing that the motorcycle was purchased from a
26 motorcycle dealer licensed in this state and that the dealer has collected the sales tax or use tax; or

27 (c) a certificate from the department that a sales tax or use tax is not due.

28 (13) As soon as practicable after a return is filed under [sections 1 through 12], the department shall
29 examine it and if it appears that the tax to be remitted is incorrect, the department shall recompute the tax owed.
30 If the amount of tax remitted with the return exceeds the amount due, the excess must be refunded to the person

1 who remitted the tax or credited against any subsequent liability of the person who submitted the return.

2 (14) Taxes paid on gross receipts represented by accounts found to be worthless may be credited
3 against subsequent liability of the vendor. The vendor may not take the credit for any bad debt until the vendor
4 has used the customary debt collection procedures as documented in writing by the vendor and has written off
5 the debt for federal tax purposes. If the previously worthless account is collected by the vendor after a credit has
6 been taken on the account, the tax paid on the amount collected must be remitted to the department.

7 (15) (a) Except as provided in subsection (23), a vendor may not collect taxes imposed by [sections 1
8 through 12] upon the sale of a motor vehicle, housetrailer, trailer, or semitrailer as those terms are defined in
9 Title 61, chapter 1.

10 (b) The sales tax or use tax imposed on a vehicle described in subsection (15)(a) must be collected by
11 the county treasurer when the vehicle is first registered in this state by the owner of the vehicle. The county
12 treasurer shall collect and remit to the department the taxes collected under this subsection (15).

13 (16) Except as provided in subsection (23), the tax imposed upon the sale or use of a motor vehicle,
14 housetrailer, trailer, or semitrailer, as those terms are defined in Title 61, chapter 1, purchased as a gift must be
15 collected from the donee when the vehicle is first registered in the state by the donee. The value of the vehicle
16 as a gift under this subsection (16) is the fair market value of the gift when it was given to the donee.

17 (17) Except as provided in subsection (18), a motor vehicle vendor or a vendor of housetrailer, trailers,
18 or semitrailers is not required to pay a sales tax or use tax on a motor vehicle, housetrailer, trailer, or semitrailer
19 that is registered in the vendor's name, is included as a part of the vendor's inventory, and is held principally in
20 the conduct of the vendor's business for sale, demonstration, or delivery prior to sale or use.

21 (18) A motor vehicle vendor is liable for payment of a sales tax or use tax on the transfer of a motor
22 vehicle with less than 1,000 miles on the odometer that the vendor purchases if:

23 (a) the vendor is not a dealer licensed under Title 61, chapter 4;

24 (b) the vehicle was transferred with a manufacturer's statement of origin or manufacturer's certificate
25 of origin from a licensed dealer; and

26 (c) the vehicle was transferred into the dealer's inventory for sale, demonstration, or delivery.

27 (19) A person regularly engaged in the business of making loans or a financial institution, as defined in
28 32-4-101, that forecloses a lien or repossesses a motor vehicle on which the person or financial institution has
29 filed a lien or an insurance company that acquires ownership of a motor vehicle pursuant to a damage settlement
30 is not liable for payment of a sales tax or use tax, penalties, or interest due under this subsection for that vehicle.

(20) The taxes are due and payable on the last day of the month following the month in which they were collected or as required by the department as specified in [sections 1 through 12].

(21) (a) If a sale is made on a credit, contract, or conditional basis and title does not pass until a future date, there must be paid with each payment the proportional amount of the total tax due.

(b) If a vendor discontinues business, the tax must be computed and paid on the outstanding amount of all credit, installment, and conditional sales.

(22) If a vendor collects tax in excess of the amount imposed by [sections 1 through 12], the vendor shall remit the excess to the department.

(23) Notwithstanding subsection (15), the tax imposed under [sections 1 through 12] upon the sale of motorcycles and motor-driven cycles, as defined in Title 61, chapter 1, and off-highway vehicles, as defined in 23-2-801, must be collected by the vendor in the manner prescribed by this section.

(24) Whenever the department has reason to believe the collection of any tax, penalty, or interest will be jeopardized by delay, the department shall immediately levy a jeopardy assessment and the amount assessed is immediately due and payable. Notice of the assessment must be given to the vendor personally or by mail. If the jeopardy assessment is not paid within 10 days after the service of notice upon the vendor, the deficiency penalty and interest provided in [section 9(2)] attaches to the amount of the jeopardy assessment.

(25) (a) The department may contract with a collection agency for collection services on deficiencies of sales taxes or use taxes occurring under [sections 1 through 12].

(b) All taxes collected by a collection agency under this section must be deposited in the state general fund.

(c) There is statutorily appropriated, as provided in 17-7-502, from the state general fund to the department the amount necessary to administer this subsection (25).

NEW SECTION. Section 7. Direct payment of sales tax -- permit required -- authorization -- rules.

(1) Upon application by a person liable for the payment of a sales tax or use tax under [sections 1 through 12], the department may issue to the applicant a direct payment permit. The holder of a direct payment permit shall make direct payment to the department of any sales tax or use tax imposed under [sections 1 through 12]. The department's decision is not appealable. The direct payment permit must be signed by an authorized representative of the department. A direct payment permit issued under this subsection may be revoked by the department 90 days after written notice is provided to the permitholder.

(2) When purchasing goods or services subject to sales tax or use tax, the holder of a direct payment permit shall provide to the vendor proof that the permitholder has a direct payment permit. The proof of the direct payment permit must state that the permitholder assumes all obligations to pay the sales tax or use tax due, if any, under [sections 1 through 12] directly to the department.

(3) Receiving proof of the direct payment permit under subsection (2) discharges the vendor from any duty to collect or liability for sales taxes or use taxes owed by the permitholder. A permitholder may be audited by the department once in each calendar year.

(4) The department shall promulgate rules necessary to implement the provisions of this section.

NEW SECTION. Section 8. Voluntary disclosure. (1) The department may enter into a voluntary disclosure agreement with any person that has sufficient contact with this state to qualify the person as a vendor under [sections 1 through 12].

(2) Application for voluntary disclosure must be made on forms provided by the department. The forms must include a report of transactions taxable under [sections 1 through 12]. The report must cover a period of not more than the 3 years immediately preceding the application.

(3) An agreement that includes authorization to audit must be signed by the applicant and an authorized agent of the department.

(4) The department may not enter into a voluntary disclosure agreement with any person that is being audited by the department or the internal revenue service.

(5) For good cause, the department may waive penalties and interest applicable to any tax liability under [sections 1 through 12] that is voluntarily disclosed in a voluntary disclosure agreement.

NEW SECTION. Section 9. Enforcement. (1) If the amount of tax paid under [sections 1 through 12] is less than the amount due, the difference, together with interest at the rate of 1% per month or fraction of a month from the time the return was due, must be paid by the vendor or any person liable for the payment of the tax within 10 days after notice of the deficiency is provided to the taxpayer and demand for payment is made by the department.

(2) (a) If the sales tax or use tax on a vehicle is not paid within 50 days after the date of the sale, or in the case of a motor vehicle brought into this state, 50 days after the vehicle is brought into the state if the owner of the vehicle submits to the county treasurer an affidavit and any other satisfactory proof to verify the date the

1 vehicle was brought into the state:

2 (i) interest accrues at the rate of 1% per month or fraction of a month from the 50th day after the date
3 of sale until the date of payment of all sales taxes or use taxes, interest, and penalties due. When the vehicle
4 is registered, the county treasurer shall collect the tax, interest, and penalties due, if any, under this subsection
5 and forward the amount collected to the department for credit to the state general fund; and

6 (ii) a penalty is imposed for late payment of the sales tax or use tax. The late-payment penalty is:

7 (A) \$25 if paid more than 50 days and less than 60 days after the date of sale; or

8 (B) the greater of \$25 or 10% of the tax due if paid more than 60 days after the date of sale.

9 (b) The tax is considered to be delinquent if the taxpayer or the taxpayer's agent knew or reasonably
10 should have known that the tax liability was not paid within the 50-day period.

11 (c) The department may credit or waive interest imposed by this subsection (2) as part of a settlement
12 or for any other good cause.

13 (3) (a) If any part of the deficiency is due to negligence or intentional disregard of the law but without
14 intent to defraud, there is an additional penalty of 10% of the amount of the deficiency, plus interest as provided
15 in subsection (2).

16 (b) The deficiency under this subsection (3) in tax paid and, if any, the interest and penalty must be paid
17 by the vendor or the person liable for the payment of the sales tax or use tax under [sections 1 through 12] within
18 10 days after the department notifies the vendor or person liable and demands payment.

19 (4) (a) If any part of the deficiency is due to fraud with intent to evade, there is an additional penalty of
20 25% of the deficiency, plus interest as provided in subsection (2).

21 (b) The deficiency under this subsection (4) in tax paid and, if any, the interest and penalty must be paid
22 by the vendor or the person liable for the payment of the sales tax or use tax under [sections 1 through 12] 10
23 days after the department notifies the vendor or person liable and demands payment.

24 (5) A vendor may not advertise or state directly or indirectly to the public that the taxes imposed by
25 [sections 1 through 12] are assumed by the vendor or that the tax will not be considered in the price or, if added,
26 will be refunded.

27 (6) A vendor that under the pretense of collecting the taxes imposed by [sections 1 through 12] collects
28 and retains an excessive amount or that intentionally fails to remit to the department the full amount of taxes
29 collected when due is guilty of:

30 (a) a misdemeanor if the amount of taxes collected is \$500 or less. A vendor found guilty under this

1 subsection (6)(a) may be fined not more than \$750, imprisoned in the county jail for not more than 6 months,
2 or both.

3 (b) a felony if the amount of taxes collected exceeds \$500. A vendor found guilty under this subsection
4 (6)(b) may be fined not more than \$5,000, imprisoned for not more than 3 years, or both.

5 (7) A person who files a false or fraudulent return is subject to the provisions of 45-7-210.

6 (8) A person who violates any provision of [sections 1 through 12] for which there is not a specific
7 penalty is guilty of a misdemeanor. Each violation is a separate offense.

8 (9) Upon request of the department, the attorney general may institute proceedings to restrain and
9 enjoin a person from:

10 (a) acting as a vendor until the person has received a license as required by [section 5]; or

11 (b) continuing to act as a vendor if the person has not remitted to the department when due all taxes
12 and, if any, all interest and penalties imposed by [sections 1 through 12].

13 (10) The tax due under [sections 1 through 12] constitutes a debt to the state from the persons who are
14 parties to the transaction, other than any vendor or other seller who is prohibited or not authorized by law to
15 collect any tax under [sections 1 through 12], and is a lien from the date the tax is due on all the real and
16 personal property of the parties to the transaction. The lien does not apply to a purchaser who paid the tax to
17 the vendor. Notice of the lien must be filed with the secretary of state. The lien does not have preference over
18 preexisting indebtedness but has priority from the date of filing or recording. The department shall cancel a lien
19 filed under this subsection within 60 days after taxes due are paid or collected. The department is not required
20 to perfect a lien under this subsection regardless of the type of property involved.

21 (11) (a) The tax due, together with interest, penalties, and costs, if any, may be collected by appropriate
22 judicial proceedings or the department may seize and sell at public auction as much of the delinquent taxpayer's
23 property as is necessary to pay all the tax and, if any, interest, penalties, and costs.

24 (b) Notice of the auction must be published for 4 weeks in a newspaper published in the county of the
25 delinquent taxpayer's residence.

26
27 **NEW SECTION. Section 10. Taxpayer remedies.** (1) Except as provided by this subsection, a person
28 who feels aggrieved by the payment of the taxes, penalty, or interest imposed under [sections 1 through 12] may
29 not appeal a decision of the state tax appeal board until all taxes and, if any, penalty and interest have been
30 paid. The court to which the decision of the board is appealed may, for good cause, stay enforcement of the

board's order assessing and levying the tax while the appeal is pending. The court's stay of enforcement does not affect the accruing of interest upon any tax due.

(2) Any tax, penalty, or interest that has been erroneously paid, collected, or computed must be credited against any future tax liability of the taxpayer or refunded to the taxpayer.

(3) (a) A credit or refund is not allowed after 3 years from the date of overpayment. The receipt of a claim for a refund by the department tolls the statute of limitations. All refund requests received by the department must be approved or denied within 90 days of receipt. A refund or credit erroneously made or allowed may be recovered in an action brought by the department in any court of competent jurisdiction.

(b) A taxpayer is entitled to receive an offsetting credit for any overpaid sales tax or use tax identified by an audit that is within the scope of the audit period, without regard to the limitation period for requesting refunds.

(4) If a mobile telecommunications service customer believes that the amount of tax, assessment, or assignment of place of primary use or taxing jurisdiction included in the customer's billing is erroneous, the customer shall notify the customer's telecommunications service provider in writing. The written notification must include the street address of the customer's place of primary use, the account name and number, a description of the error claimed by the customer, and any other information that the service provider reasonably requires to process the request. Within 60 days of receiving a written notice under this subsection, the service provider shall review its records to determine the customer's taxing jurisdiction. If the review shows that the amount of tax, assessment, or assignment of place of primary use or taxing jurisdiction is in error, the service provider shall correct the error and refund or credit the amount of tax erroneously billed to the customer for a period not to exceed 3 years. If the review shows that the amount of tax, assessment, or assignment of place of primary use or taxing jurisdiction are correct, the service provider shall provide a written explanation to the customer. The procedures in this subsection are the first step in a remedy available to a customer for a billing dispute. A cause of action based upon the billing dispute may not be filed until the customer has reasonably exercised the rights and followed the procedures provided in this subsection.

NEW SECTION. Section 11. Distribution. (1) All taxes, penalties, and interest collected by the department pursuant to [sections 1 through 12] must be transferred to the state treasurer for deposit in a sales tax and use tax account in the state special revenue fund.

(2) Sales tax and use tax revenue that is payable to the department under [sections 1 through 12] during

1 each fiscal year must be recognized as revenue collected during that fiscal year for accounting purposes.

2 (3) (a) Subject to the provisions of subsection (6), the state treasurer shall transfer from the sales tax
3 and use tax account to the state general fund the following:

4 (i) from [the applicability date of this section] through June 30, 2004, 71.5% of the balance of the
5 account; and

6 (ii) beginning July 1, 2004, 70% of the balance of the account.

7 (b) Subsequent to the transfer under subsection (3)(a), the state treasurer shall distribute from the
8 account 1% of the amount remaining as follows:

9 (i) beginning [on the applicability date of this section] through June 30, 2004, \$20,000 and beginning
10 July 1, 2004, \$40,000 annually to each county in equal monthly installments; and

11 (ii) the remainder to each county in the proportion that the total population of the county bears to the total
12 population of the state.

13 (c) Subsequent to the transfers under subsection (3)(b), the state treasurer shall distribute the balance
14 of the account to each county and to incorporated cities and towns by computing the percentage that total sales
15 taxes and use taxes collected by vendors in each county, including incorporated cities and towns located in the
16 county, bears to total sales taxes or use taxes collected by vendors in all counties, including the incorporated
17 cities and towns in all counties. Subject to subsection (7), the percentage of the balance calculated under this
18 subsection (3)(c) must be distributed within each county as follows:

19 (i) to each county in the proportion that the population of the county situated outside the corporate limits
20 of its cities and towns bears to the total population of the county including cities and towns; and

21 (ii) to each city and town within the county in the proportion the population of the city or town bears to
22 the population of the county.

23 (4) A vendor shall annually provide the department information indicating the amount of tax collected
24 under [sections 1 through 12] from sales of propane, butane, liquefied gas, and compressed natural gas. Upon
25 verification by the department, the state treasurer shall annually transfer from the state general fund to the
26 highway revenue account created under 15-70-101 10% of the amount collected statewide under [sections 1
27 through 12] on sales of propane, butane, liquefied gas, and compressed natural gas.

28 (5) In addition to the distribution provided for in subsection (3), beginning [on the applicability date of
29 this section] through June 30, 2004, 29.5% and beginning July 1, 2004, 31% of sales taxes or use taxes
30 collected from out-of-state vendors must be distributed to counties, cities, and towns in the same percentages

as determined in subsection (3)(c).

(6) If the tax imposed under [section 3] is reduced to 0.5% under [section 3(3) and (4)], beginning September 1 of the year in which the reduction occurs, the distributions to the state general fund under subsection (3)(a) must be reduced to 65%.

(7) (a) If an annexation occurs, the department of revenue shall determine whether the proportion of sales tax or use tax to be distributed to the county in which the annexation takes place will be reduced by more than 5% solely as a result of the annexation. If the reduction exceeds 5%, then the distribution for the affected municipality and county must occur as provided in subsections (7)(b) through (7)(d).

(b) Beginning with the month following the month in which the annexation occurs and continuing through the remainder of the fiscal year in which the annexation occurs, the annexing municipality receives credit for 35% of the population of the area to be annexed with the remainder credited to the county.

(c) In each of the succeeding 4 fiscal years, the annexing municipality receives credit for an additional 25% of the remaining 65% of the population of the area annexed, with the remainder credited to the county.

(d) The department of revenue shall proportionally adjust credits for population under this subsection (7) for the remainder of the period based upon new population figures if a federal census occurs before the period under subsection (7)(b) ends.

NEW SECTION. Section 12. Imposition of sales tax or use tax for construction. (1) A contractor

who furnishes tangible personal property or services under contract or in the development of real property is the consumer or user of the tangible personal property or services within the meaning of [sections 1 through 12].

(2) A subcontractor who contracts with a contractor is liable for any sales tax or use tax. The contractor shall withhold the amount of sales tax or use tax imposed under [section 3] from the payments due to a nonresident subcontractor arising out of the contract entered into between the subcontractor and contractor. The contractor shall withhold the payments until the subcontractor furnishes the contractor with a certificate issued by the department showing that all sales taxes and use taxes accruing by reason of the contract have been paid. The department may demand the withholdings at any time to satisfy the sales tax or use tax liability of the subcontractor, and any balance of the amount withheld must be released by the department to the subcontractor. A contractor that fails to withhold payments or refuses to remit the amount withheld upon demand by the department is liable for any sales taxes or use taxes due to the state from the nonresident subcontractor. This subsection does not apply to a subcontractor that is hired to provide labor only to alter, construct, improve, or

1 repair real property.

2 (3) A nonresident contractor shall file with the department a surety bond or legal security equal to 4%
3 of the payments due under the contract or an amount determined by the department. The bond must be
4 conditioned upon the payment of all sales taxes or use taxes that become due and payable to this state under
5 the contract or in the real property development. The security required under this subsection does not apply to
6 a nonresident contractor that has furnished a surety bond pursuant to subsection (6).

7 (4) A resident or nonresident contractor that hires a nonresident subcontractor shall register each project
8 with the department not less than 15 days following the start of a project pursuant to a contract. A nonresident
9 contractor shall provide a properly executed bond as required under subsection (3) or a cash deposit of not less
10 than 4% of the total payments due under the contract. The cash deposit must be refunded to the contractor upon
11 the department's receipt of a properly executed surety bond or upon satisfactory completion of the project. If a
12 contractor that is required to register under this subsection fails to register with the department within the time
13 period required, a penalty of 1% of the total payments due under the contract must be added to the amount of
14 sales taxes and use taxes due. The department may, for good cause, waive all or part of the penalty.

15 (5) A person that is a party to or performing work on a contract subject to the security provisions of this
16 section may be enjoined from commencing or continuing any work until approved security has been filed with
17 the department. Any legal action under this subsection brought in the name of the state must be filed by the
18 attorney general or by a county attorney. The state is not required to post security in seeking a restraining order
19 or preliminary injunction under this subsection.

20 (6) In lieu of filing the bond or security required under this section, a nonresident contractor may file and
21 maintain with the department a surety bond or legal security in the amount of \$1,000,000. The bond must be
22 conditioned upon the payment of all sales taxes or use taxes that become due and payable to this state under
23 any of the contractor's contracts or in any of the contractor's real property developments in this state. A
24 nonresident contractor electing to file a bond or security under this subsection shall maintain the bond or security
25 until the contractor is no longer required to file any bond or security under [sections 1 through 12] or until a bond
26 or security is filed under subsection (3).

27 (7) If a nonresident subcontractor contracts with a contractor and posts with the department a surety
28 bond certified as sufficient by the department conditioned upon payment when due of all sales taxes and use
29 taxes in the performance of the contract, the withholding provisions of subsection (2) do not apply.

30 (8) (a) Whenever a nonresident contractor or nonresident subcontractor furnishes a surety bond for the

1 faithful performance of a contract or subcontract, there is imposed an additional obligation upon the surety
2 company to this state that the nonresident contractor pays all sales taxes and use taxes that become due in the
3 performance of the contract. In the case of a nonresident contractor, this additional obligation includes liability
4 to pay the department all sales taxes and use taxes that have not been paid to a licensed vendor or the
5 department by the nonresident contractor.

6 (b) A nonresident contractor or the contractor's surety company is authorized to recover from a
7 nonresident subcontractor the amount of sales taxes or use taxes due on purchases made by the nonresident
8 subcontractor that were paid to the department by the nonresident contractor or the surety company.

9 (c) As an alternative to recovery pursuant to subsection (8)(b), a nonresident contractor may withhold
10 from payments made under the contract the amount of taxes paid by the contractor due from but not paid by the
11 nonresident subcontractor.

12 (9) The liability of the surety company under this section is limited to 4% of the contract price.

13 (10) The additional obligation upon the surety company ceases 6 months after the completion of the
14 contract and the acceptance of the work and services performed unless written notice of unpaid sales taxes or
15 use taxes is given to the surety company by the department.

16
17 **NEW SECTION. Section 13. Short title.** [Sections 13 through 20] may be cited as the "Uniform Sales
18 and Use Tax Administration Act".

19
20 **NEW SECTION. Section 14. Definitions.** As used in [sections 13 through 20]:

21 (1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

22 (2) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited
23 liability partnership, corporation, or any other legal entity.

24 (3) "Seller" means any person making sales, leases, or rentals of personal property or services.

25 (4) "State" means any state of the United States and includes the District of Columbia.

26
27 **NEW SECTION. Section 15. Authority to enter agreement.** (1) The department is authorized and
28 directed to enter into the agreement with one or more states to simplify and modernize sales and use tax
29 administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of
30 commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are

1 members of the agreement to establish standards for certification of a certified service provider and a certified
2 automated system and to establish performance standards for multistate sellers.

3 (2) The department is further authorized to take other actions reasonably required to implement the
4 provisions of [sections 13 through 20]. Other actions authorized by this section include but are not limited to the
5 adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of
6 the agreement.

7 (3) The director of revenue or the director's designee is authorized to represent this state before the
8 other states that are signatories to the agreement.

9
10 **NEW SECTION. Section 16. Relationship to state law.** A provision of the agreement, in whole or in
11 part, does not invalidate or amend any law of this state. Implementation of any condition of the agreement in this
12 state, whether adopted before, at, or after membership of this state in the agreement, must be by action of this
13 state.

14
15 **NEW SECTION. Section 17. Agreement requirements.** (1) The department may not enter into the
16 agreement unless the agreement requires that as a condition of participation each state shall abide by the
17 requirements of subsections (2) through (11).

18 (2) The agreement must set restrictions to achieve over time more uniform state rates through the
19 following:

- 20 (a) limiting the number of state rates;
21 (b) limiting the application of maximums on the amount of state tax that is due on a transaction; and
22 (c) limiting the application of thresholds on the application of state tax.

23 (3) The agreement must establish uniform standards for the following:

- 24 (a) the sourcing of transactions to taxing jurisdictions;
25 (b) the administration of exempt sales;
26 (c) the allowances that a seller may take for bad debts; and
27 (d) sales and use tax returns and remittances.

28 (4) The agreement must require states to develop and adopt uniform definitions of sales and use tax
29 terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the
30 uniform definitions.

(5) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(6) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(7) The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(a) restricting and eliminating variances between the state and local tax bases;

(b) requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting the taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(8) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(9) The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(10) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(11) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

NEW SECTION. Section 18. Cooperating sovereigns. The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the adopted law of each member state.

1
2 **NEW SECTION. Section 19. Limited binding and beneficial effect.** (1) The agreement binds and
3 inures only to the benefit of this state and the other member states. No person, other than a member state, is
4 an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law
5 of this state and the other member states and not by the terms of the agreement.

6 (2) Consistent with subsection (1), no person has any cause of action or defense under the agreement
7 or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any
8 provision of law, any action or inaction by any department, agency, or other instrumentality of this state or any
9 political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

10 (3) No law of this state, or the application of a law of this state, may be declared invalid as to any person
11 or circumstance on the ground that the provision or application is inconsistent with the agreement.
12

13 **NEW SECTION. Section 20. Seller and third-party liability.** (1) A certified service provider is the
14 agent of a seller with whom the certified service provider has contracted for the collection and remittance of sales
15 and use taxes. As the seller's agent, the certified service provider is liable for any sales and use tax due each
16 member state on all sales transactions that it processes for the seller, except as set out in this section.

17 (2) A seller that contracts with a certified service provider is not liable to the state for sales or use tax
18 due on any transaction processed by the certified service provider unless the seller misrepresented the type of
19 items that it sells or committed fraud. In the absence of probable cause to believe that the seller has committed
20 fraud or made a material misrepresentation, the seller is not subject to audit on the transaction processed by
21 the certified service provider. A seller is subject to audit for any transaction not processed by the certified service
22 provider. The member states acting jointly may perform a system check of the seller and review the seller's
23 procedures to determine if the certified service provider's system is functioning properly and the extent to which
24 the seller's transactions are being processed by the certified service provider.

25 (3) A person that provides a certified automated system is responsible for the proper functioning of that
26 system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified
27 automated system. A seller that uses a certified automated system remains responsible and is liable to the state
28 for reporting and remitting tax.

29 (4) A seller that has a proprietary system for determining the amount of tax due on a transaction and
30 has signed an agreement establishing a performance standard for that system is liable for the failure of the

1 system to meet the performance standard.

2
3 **Section 21.** Section 5-12-303, MCA, is amended to read:

4 **"5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may
5 investigate and examine the costs and revenue of state government activities and may examine and obtain
6 copies of the records, books, and files of any state agency, including confidential records.

7 (2) When confidential records and information are obtained from a state agency, the legislative fiscal
8 analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records
9 and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall
10 develop policies to prevent the unauthorized disclosure of confidential records and information obtained from
11 state agencies.

12 ~~(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under~~
13 ~~15-30-303. The department of revenue shall make individual income tax data available by removing names,~~
14 ~~addresses, occupations, social security numbers, and taxpayer identification numbers. The department of~~
15 ~~revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as~~
16 ~~are individual income tax returns.~~

17 ~~———(4)(3)~~ Within 1 day after the legislative finance committee presents its budget analysis to the legislature,
18 the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement
19 recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This
20 information must be filed in the respective offices and be made available to the legislature and the public. In
21 preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst
22 shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

23 ~~(5)(4)~~ This section does not authorize publication or public disclosure of information if the law prohibits
24 publication or disclosure."
25

26 **Section 22.** Section 7-13-308, MCA, is amended to read:

27 **"7-13-308. Revenue bonds and obligations.** (1) A joint district may borrow money for any purpose
28 provided in this part and issue bonds, including refunding bonds, in a form and upon terms as ~~it may determine~~
29 the joint district determines, payable from any revenue of the joint district, including revenue from:

30 (a) service charges authorized in 7-13-307;

(b) grants or contributions from the state or federal government; or

(c) other sources.

(2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, bonds issued pursuant to this part by a joint district may be payable in principal and interest solely from revenues of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by a joint district under this part are issued for an essential public and governmental purpose by a political subdivision, ~~within the meaning of 15-30-111(2)(a)~~ as defined in 2-9-101.

(5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part prior to the payment of current costs of operation and maintenance of the solid waste management system."

Section 23. Section 7-14-1133, MCA, is amended to read:

"7-14-1133. Bonds and obligations. (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds, including refunding bonds, for any of its corporate purposes. The bonds may be in the form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

(a) any port or transportation and storage facility;

(b) taxes levied pursuant to 7-14-1131 or 67-10-402;

1 (c) grants or contributions from the federal government; or

2 (d) other sources.

3 (2) The bonds may be issued by resolution of the authority, without an election and without any limitation
4 of amount, except that bonds may not be issued at any time if the total amount of principal and interest to
5 become due in any year on the bonds and on any then outstanding bonds for which revenue from the same
6 source is pledged exceeds the amount of revenue to be received in that year, as estimated in the resolution
7 authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose,
8 maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the
9 revenue from the pledged source in ~~such~~ that year at least equal to the amount of principal and interest due in
10 that year.

11 (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102.
12 Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable
13 as to principal and interest solely from revenue of the authority or from particular port, transportation, storage,
14 or other facilities of the authority. The bonds must state on their face the applicable limitations or restrictions
15 regarding the source from which principal and interest are payable.

16 (4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are
17 declared to be issued for an essential public and governmental purpose by a political subdivision, ~~within the~~
18 ~~meaning of 15-30-111(2)(a)~~ as defined in 2-9-101.

19 (5) (a) For the security of bonds, the authority, county, or municipality may by resolution make and enter
20 into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised
21 by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal
22 and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this
23 part, prior to the payment of current costs of operation and maintenance of the facilities.

24 (b) As further security for the bonds, the authority, with the approval of the governing body of the county
25 or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or
26 any portion of its port, transportation, storage, or other facilities, whether or not the facilities are financed by the
27 bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any
28 agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the
29 authority consider advisable. The provisions must be consistent with this part and are subject to and must be
30 in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or

1 instruments. The instrument may provide that in the event of a default in the payment of principal or interest on
2 the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or
3 instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver
4 in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged
5 property or collateral in accordance with the proceedings or the provisions of the instrument.

6 (6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority revenue,
7 including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide
8 financial and other support to private development organizations, including corporations organized under the
9 provisions of the development corporation act in Title 32, chapter 4. The credit of the state, county, or municipal
10 governments or their agencies or authorities may not be pledged to provide financial support to the development
11 organizations."

12
13 **Section 24.** Section 7-14-1636, MCA, is amended to read:

14 **"7-14-1636. Bonds and obligations.** (1) An authority may borrow money for any of its corporate
15 purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms as it
16 determines, payable out of any revenue of the authority, including revenue derived from:

- 17 (a) a railroad;
18 (b) taxes levied pursuant to 7-14-1632;
19 (c) grants or contributions from the federal government; or
20 (d) other sources.

21 (2) The bonds may be issued by resolution of the authority, without an election and without any limitation
22 of amount, except that bonds may not be issued at any time if the total amount of principal and interest to
23 become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source
24 is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution
25 authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose,
26 maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the
27 revenue from the pledged source in the year at least equal to the amount of principal and interest due in that
28 year.

29 (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102.
30 Bonds issued by an authority pursuant to this part may be payable as to principal and interest solely from

1 revenue of the authority and must state on their face the applicable limitations or restrictions regarding the
2 source from which the principal and interest are payable.

3 (4) Bonds issued by an authority pursuant to the provisions of this part are declared to be issued for an
4 essential public and governmental purpose by a political subdivision, ~~within the meaning of 15-30-111(2)(a)~~ as
5 defined in 2-9-101.

6 (5) For the security of the bonds, the authority may by resolution make and enter into any covenant,
7 agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality
8 under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and
9 to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the
10 payment of current costs of operation and maintenance of the facilities."
11

12 **Section 25.** Section 7-34-2416, MCA, is amended to read:

13 **"7-34-2416. Tax-exempt status of bonds.** Bonds issued by a county pursuant to the provisions of
14 7-34-2411 and 7-34-2413 through 7-34-2418 are declared to be issued for an essential public and governmental
15 purpose by a political subdivision, ~~within the meaning of 15-30-111(2)(a)~~ as defined in 2-9-101."
16

17 **Section 26.** Section 13-37-218, MCA, is amended to read:

18 **"13-37-218. Limitations on receipts from political committees.** A candidate for the state senate may
19 receive no more than \$1,000 in total combined monetary contributions from all political committees contributing
20 to the candidate's campaign, and a candidate for the state house of representatives may receive no more than
21 \$600 in total combined monetary contributions from all political committees contributing to the candidate's
22 campaign. The limitations in this section must be multiplied by the inflation factor as defined in ~~15-30-101~~
23 15-1-101 for the year in which general elections are held. The resulting figure must be rounded off to the nearest
24 \$50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be
25 included in computing these limitation totals. The limitation provided in this section does not apply to
26 contributions made by a political party eligible for a primary election under 13-10-601."
27

28 **Section 27.** Section 15-1-101, MCA, is amended to read:

29 **"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this
30 section are used in connection with taxation, they are defined in the following manner:

1 (a) The term "agricultural" refers to:

2 (i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables,
3 and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial
4 purposes; and

5 (ii) the raising of domestic animals and wildlife in domestication or a captive environment.

6 (b) The term "assessed value" means the value of property as defined in 15-8-111.

7 (c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the
8 profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

9 (d) (i) The term "commercial", when used to describe property, means property used or owned by a
10 business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property
11 described in subsection (1)(d)(ii).

12 (ii) The following types of property are not commercial:

13 (A) agricultural lands;

14 (B) timberlands and forest lands;

15 (C) single-family residences and ancillary improvements and improvements necessary to the function
16 of a bona fide farm, ranch, or stock operation;

17 (D) mobile homes and manufactured homes used exclusively as a residence except when held by a
18 distributor or dealer as stock in trade; and

19 (E) all property described in 15-6-135.

20 (e) The term "comparable property" means property that:

21 (i) has similar use, function, and utility;

22 (ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

23 (iii) has the potential of a similar highest and best use.

24 (f) "Consumer price index" means the consumer price index, United States city average, for all items,
25 using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

26 (g) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

27 (i) that is treated as an association for federal income tax purposes;

28 (ii) for which a valid election under section 1362 of the Internal Revenue Code, 26 U.S.C. 1362, is not
29 in effect; and

30 (iii) that is not a disregarded entity.

~~(f)~~(h) The term "credit" means solvent debts, secured or unsecured, owing to a person.

~~(g)~~(i) (i) "Department", except as provided in subsection ~~(1)(g)~~(1)(i)~~(ii)~~, means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(j) "Disregarded entity" means a business entity:

(i) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(ii) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3).

(k) "Dividend" means:

(i) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(ii) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(l) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(m) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(h)~~(n) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(o) "Gross income" means the person's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, 26 U.S.C. 61, or as that section may be labeled or amended.

~~(i)~~(p) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(q) "Inflation factor" means a number determined for each tax year by dividing the consumer price index

1 for June of the tax year by the consumer price index for June 1980.

2 (r) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be
3 labeled or further amended. References to specific provisions of the Internal Revenue Code mean those
4 provisions as they may be otherwise labeled or further amended.

5 (s) "Knowingly" has the meaning provided in 45-2-101.

6 ~~(j)~~(t) The term "leasehold improvements" means improvements to mobile homes and mobile homes
7 located on land owned by another person. This property is assessed under the appropriate classification, and
8 the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold
9 improvements are a lien only on the leasehold improvements.

10 (u) "Limited liability company" means a limited liability company, domestic limited liability company, or
11 a foreign limited liability company as defined in 35-8-102.

12 (v) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

13 ~~(k)~~(w) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas,
14 bison, ostriches, rheas, emus, and domestic ungulates.

15 (x) "Lottery winnings" means income paid either in lump sum or in periodic payments to a person on a
16 lottery ticket purchased in Montana.

17 ~~(h)~~(y) The term "manufactured home" means a residential dwelling built in a factory in accordance with
18 the United States department of housing and urban development code and the federal Manufactured Home
19 Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in
20 61-1-501 and in subsection ~~(1)~~(m) ~~(1)~~(z) of this section, a housetrailer, as defined in 61-1-501, or a mobile home
21 or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into
22 effect on June 15, 1976.

23 ~~(m)~~(z) The term "mobile home" means forms of housing known as "trailers", "housetrainers", or "trailer
24 coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an
25 independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet
26 in length used as a principal residence.

27 (aa) (i) "Montana source income" means:

28 (A) all compensation for services performed in this state while engaged in business this state;

29 (B) gain attributable to the sale or other transfer of tangible property located in this state, sold,
30 transferred, or used or held in connection with a trade, business, or occupation carried on in this state;

1 (C) gain attributable to the sale or other transfer of intangible property received or accrued while
2 engaged in business this state;

3 (D) interest received or accrued while engaged in business this state or from an installment sale of real
4 property or tangible commercial or business personal property located in this state;

5 (E) dividends received or accrued while engaged in business this state;

6 (F) net income or loss derived from a trade, business, profession, or occupation carried on in this state
7 or while engaged in business this state;

8 (G) net income or loss derived from farming activities carried on in this state or while engaged in
9 business this state;

10 (H) net rents from real property and tangible personal property located in this state or received or
11 accrued while engaged in business this state;

12 (I) net royalties from real property and from tangible real property to the extent the property is used in
13 this state or the net royalties are received or accrued while engaged in business this state. The extent of use
14 in this state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days
15 of physical location of the property in this state during the royalty period in the tax year and the denominator of
16 which is the number of days of physical location of the property everywhere during all royalty periods in the tax
17 year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in
18 this state in which it was located at the time the person paying the royalty obtained possession.

19 (J) patent royalties to the extent the person paying them employs the patent in production, fabrication,
20 manufacturing, or other processing in this state, a patented product is produced in this state, or the royalties are
21 received or accrued while engaged in business this state;

22 (K) net copyright royalties to the extent printing or other publication originates in this state or the royalties
23 are received or accrued while engaged in business this state;

24 (L) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

25 (I) derived from a trade, business, occupation, or profession carried on in this state;

26 (II) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
27 property located in this state; or

28 (III) taken into account while engaged in business this state;

29 (M) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or
30 item of income, gain, loss, deduction, or credit;

1 (I) derived from a trade, business, occupation, or profession carried on in this state;

2 (II) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
3 property located in this state; or

4 (III) taken into account while engaged in business this state;

5 (N) any other income attributable to this state, including but not limited to lottery winnings, state and
6 federal tax refunds, recapture of tax benefits, and capital loss addbacks.

7 (ii) The term does not include interest paid on loans held by out-of-state financial institutions recognized
8 as financial institutions in the state of their domicile, secured by mortgages, trust indentures, or other security
9 interests on real or personal property located in the state, if the loan is originated by a lender doing business in
10 Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana
11 except periodic inspection of the security.

12 (bb) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this
13 title.

14 (cc) "Nonresident" means a natural person who is not a resident.

15 (dd) "Paid", for the purposes of the deductions and credits, means paid or accrued or paid or incurred,
16 and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting
17 upon the basis of which the taxable income is computed under this title.

18 (ee) "Partner" means a member of a partnership or a manager or member of any other entity, if treated
19 as a partner for federal income tax purposes.

20 (ff) "Partnership" means a general or limited partnership, limited liability partnership, limited liability
21 company, or other entity, if treated as a partnership for federal income tax purposes.

22 (gg) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

23 (hh) (i) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited
24 liability partnership, corporation, or any other legal entity.

25 (ii) As used in chapter 31, the term does not include an individual.

26 ~~(n)~~(ii) The term "personal property" includes everything that is the subject of ownership but that is not
27 included within the meaning of the terms "real estate" and "improvements" and "intangible personal property"
28 as that term is defined in 15-6-218.

29 ~~(o)~~(ii) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in
30 domestication to produce food or feathers.

1 ~~(p)~~(kk) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters
2 and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to
3 authorize the taxation of the stocks of a company or corporation when the property of the company or
4 corporation represented by the stocks is within the state and has been taxed.

5 (ll) "Purposely" has the meaning provided in 45-2-101.

6 ~~(mm)~~ "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana
7 incorporated or established organization that:

8 (i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

9 (ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf
10 of a tax-exempt organization.

11 (iii) For the purposes of 15-31-161 and 15-31-162, the affordable housing revolving loan account
12 established in 90-6-133 is considered to be a qualified endowment.

13 ~~(n)~~(nn) The term "real estate" includes:

14 (i) the possession of, claim to, ownership of, or right to the possession of land;

15 (ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and
16 Title 15, chapter 23, part 8;

17 (iii) all timber belonging to individuals or corporations growing or being on the lands of the United States;
18 and

19 (iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

20 (oo) "Received", for the purpose of computation of taxable income means received or accrued, and the
21 term "received or accrued" must be construed according to the method of accounting upon the basis of which
22 the taxable income is computed.

23 ~~(r)~~(pp) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking,
24 and winter sports, including but not limited to skiing, skating, and snowmobiling.

25 ~~(s)~~(qq) "Research and development firm" means an entity incorporated under the laws of this state or
26 a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical
27 analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific
28 and technical nature into practical application for experimental and demonstration purposes, including the
29 experimental production and testing of models, devices, equipment, materials, and processes.

30 (rr) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the

1 Internal Revenue Code, 26 U.S.C. 1362, is in effect.

2 (ss) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in
3 proportion to their previous holdings.

4 ~~(t)~~(tt) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is
5 listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent
6 foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

7 (uu) "Tax year" means the person's tax year for federal income tax purposes.

8 (vv) "Taxable income" means the adjusted gross income of a person less the deductions and
9 exemptions provided for in this title.

10 ~~(u)~~(ww) The term "taxable value" means the percentage of market or assessed value as provided for
11 in Title 15, chapter 6, part 1.

12 (xx) (i) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or
13 other obligation imposed by this title.

14 (ii) As used in chapter 31, the term does not include an individual.

15 (2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city,
16 incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or
17 organized body authorized by law to establish tax levies for the purpose of raising public revenue.

18 (3) The term "state board" or "board" when used without other qualification means the state tax appeal
19 board."
20

21 **Section 28.** Section 15-1-102, MCA, is amended to read:

22 **"15-1-102. Person defined.** As used in this title, ~~(except chapters 30 and chapter 31)~~, unless the
23 context indicates otherwise, the term "person" means an individual, corporation (domestic or foreign),
24 partnership, association, joint-stock company, or syndicate."
25

26 **Section 29.** Section 15-1-205, MCA, is amended to read:

27 **"15-1-205. Biennial report -- contents.** (1) The department shall transmit to the governor 20 days
28 before the meeting of the legislature and make available to the legislature a report of the department showing
29 all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions
30 of 5-11-210 in preparing the report.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

(3) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) ~~personal income~~ and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against ~~Montana personal income tax~~ or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(4) The data described in subsection (3), if reported, must be related to the income ~~and age~~ of the taxpayer whenever the information is available.

(5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

1 **Section 30.** Section 15-1-206, MCA, is amended to read:

2 **"15-1-206. Waiver of penalties -- interest.** (1) The department may, in its discretion, waive, for
3 reasonable cause, any penalty assessed by the department.

4 (2) Whenever the department waives a penalty provided for in this title, it also may, ~~in its discretion,~~
5 waive interest not to exceed \$100 due upon the tax.

6 (3) Whenever the department is notified of a change in federal taxable income upon filing an amended
7 Montana return, ~~as provided for in 15-30-304,~~ the department shall waive the interest on the additional tax
8 liability from the date the department is notified until the department sends the statement of increased tax liability
9 to the taxpayer."

10
11 **Section 31.** Section 15-1-208, MCA, is amended to read:

12 **"15-1-208. Signature alternatives for electronically filed returns.** For purposes of Title 15, chapters
13 1, 2, 6 through 10, 15 through 18, 23, 24, ~~30~~ 31 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and
14 65, and Title 16, chapter 11, the director of revenue, and for the purposes of Title 15, chapter 70, the director
15 of the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying
16 electronically filed tax returns. Returns electronically filed in accordance with the methods adopted by rule have
17 the same validity and consequences as physical forms signed by a taxpayer."

18
19 **Section 32.** Section 15-1-211, MCA, is amended to read:

20 **"15-1-211. Uniform dispute review procedure -- notice -- appeal.** (1) The department shall provide
21 a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

22 (a) The department's dispute review procedure must be adopted by administrative rule and applies to
23 all matters administered by the department and to all issues arising from the administration of the department,
24 except estate taxes, property taxes, and the issue of whether an ~~employer-employee relationship existed~~
25 ~~between the person or other entity and individuals subjecting the person or other entity to the requirements of~~
26 ~~chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure~~
27 applies to assessments of centrally assessed property taxed pursuant to chapter 23.

28 (b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar
29 enterprises.

30 (ii) The term "person" as used in this section includes all individuals.

1 (2) (a) Persons or other entities having a dispute with the department have the right to have the dispute
2 resolved by appropriate means, including consideration of alternative dispute resolution procedures such as
3 mediation.

4 (b) The department shall establish a dispute resolution office to resolve disputes between the
5 department and persons or other entities.

6 (c) Disputes must be resolved by a final department decision within 180 days of the referral to the
7 dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not
8 issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

9 (3) (a) The department shall provide written notice to a person or other entity advising them of a dispute
10 over matters administered by the department.

11 (b) The person or other entity shall have the opportunity to resolve the dispute with the department
12 employee who is responsible for the notice, as indicated on the notice.

13 (c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to
14 the dispute resolution office.

15 (d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the
16 person responsible for the notice and their right to refer the dispute to the dispute resolution office.

17 (4) Written notice must be sent to the persons or other entities involved in a dispute with the department
18 indicating that the matter has been referred to the dispute resolution office. The written notice must include:

19 (a) a summary of the department's position regarding the dispute;

20 (b) an explanation of the right to the resolution of the dispute with a clear description of all procedures
21 and options available;

22 (c) the right to obtain a final department decision within 180 days of the date that the dispute was
23 referred to the dispute resolution office;

24 (d) the right to appeal should the department fail to meet the required deadline for issuing a final
25 department decision; and

26 (e) the right to have the department consider alternative dispute resolution methods, including
27 mediation.

28 (5) The department shall:

29 (a) develop guidelines that must be followed by employees of the department in dispute resolution
30 matters;

1 (b) develop policies concerning the authority of an employee to resolve disputes; and

2 (c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute
3 resolution office.

4 (6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with
5 a person or other entity relating to a matter administered by the department.

6 (ii) The director or the director's designee has no authority to bind a future legislature through the terms
7 of an agreement.

8 (b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and
9 conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

10 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
11 employee, or agent of this state; and

12 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection,
13 payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be
14 annulled, modified, set aside, or disregarded."

15
16 **Section 33.** Section 15-1-302, MCA, is amended to read:

17 **"15-1-302. Witnesses -- oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation by
18 the department may be administered by the director of revenue or the director's agent.

19 (2) (a) If a witness fails to obey a summons to appear before the department or refuses to testify or
20 answer any material question or to produce records, books, papers, or documents when required to do so, the
21 department shall institute proceedings in the district court to compel obedience to a summons or order of the
22 board or to punish the witness for neglect or refusal to obey the summons.

23 (b) ~~As required by 15-30-209, the~~ The department, in addition to instituting proceedings to compel
24 obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order
25 requiring the payment of all penalties assessed for the employer's failure to report.

26 (3) A person who testifies falsely in any material matter under consideration by the department is guilty
27 of perjury and shall be punished accordingly.

28 (4) Witnesses attending an investigation by the department must receive the same compensation as
29 witnesses in the district court. The compensation must be charged to the proper appropriation for the
30 department."

1
2 **Section 34.** Section 15-1-501, MCA, is amended to read:

3 **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state
4 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3)
5 all money received from the collection of:

6 (a) ~~income sales taxes and use taxes, interest, and penalties collected under chapter 30 transferred~~
7 under [sections 1 through 20];

8 (b) all taxes, interest, and penalties collected under chapter 31;

9 (c) oil and natural gas production taxes distributed to the general fund under 15-36-324;

10 (d) electrical energy producer's license taxes under chapter 51;

11 (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

12 (f) liquor license taxes under Title 16;

13 (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided
14 in 61-5-121;

15 (h) estate taxes under Title 72, chapter 16; and

16 (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping
17 by a foreign capital depository as provided in 15-31-803.

18 (2) The department shall also deposit to the credit of the state general fund all money received from
19 the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under
20 the operation of the Montana Alcoholic Beverage Code.

21 (3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according
22 to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax
23 revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department
24 of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

25 (4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded.
26 All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are
27 currently being recorded."
28

29 **Section 35.** Section 15-1-503, MCA, is amended to read:

30 **"15-1-503. Refund of overpayment -- procedure.** (1) When there has been an overpayment of the

1 estate tax collected by county treasurers or any other tax collected by the department and there is no law
2 providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any
3 interest and penalty due the taxpayer, as provided in subsection (2).

4 (2) A refund or payment is not allowed unless a claim is filed by the taxpayer before the expiration of
5 5 years from the time that the tax was paid. Within 6 months after the claim is filed, the department shall
6 examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be
7 made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall
8 notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding
9 a hearing, the determination of the department may be reviewed as provided by ~~15-30-148~~ 15-2-303."

10
11 **Section 36.** Section 15-2-201, MCA, is amended to read:

12 **"15-2-201. Powers and duties.** (1) It is the duty of the state tax appeal board to:

13 (a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties
14 and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county
15 tax appeal board members to attend if possible, and the cost of their attendance must be paid from the
16 appropriation of the state tax appeal board;

17 (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because
18 of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided
19 for in 15-15-101(2) to hear an appeal.

20 (c) hear appeals from decisions of the county tax appeal boards;

21 (d) hear appeals from decisions of the department of revenue in regard to business licenses, property
22 assessments, taxes, ~~except determinations that an employer-employee relationship existed between the~~
23 ~~taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2; and penalties.~~

24 (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a
25 member of the board or the member's agent. If a witness does not obey a summons to appear before the board
26 or refuses to testify or answer any material questions or to produce records, books, papers, or documents when
27 required to do so, that failure or refusal must be reported to the attorney general, who shall ~~thereupon~~
28 proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies
29 falsely in any material matter under consideration by the board is guilty of perjury and shall be punished
30 accordingly. Witnesses attending shall receive the same compensation as witnesses in the district court. The

1 compensation must be charged to the proper appropriation for the board.

2 (3) The state tax appeal board also has the duties of an appeal board relating to other matters as may
3 be provided by law."

4
5 **Section 37.** Section 15-2-302, MCA, is amended to read:

6 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
7 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

8 (a) property centrally assessed under chapter 23;

9 (b) classification of property as new industrial property;

10 (c) any other tax, other than the property tax, imposed under this title; or

11 (d) any other matter in which the appeal is provided by law.

12 (2) (a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board
13 within 30 days following receipt of notice of the department's final decision. The complaint must set forth the
14 grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the
15 complaint to the department.

16 (b) An appeal from the department's determination of whether wages earned by an unemployment
17 insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the
18 board within 10 days following receipt of notice of the department's final determination. The board shall promptly
19 mail a copy of the complaint to each interested party at the last-known address of each party.

20 (3) The department shall file with the board an answer within 30 days following filing of a complaint, or
21 in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant
22 were properly reported to the department, any interested party, ~~as defined in 15-30-257(1)(e)~~, and the
23 department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with
24 the board, and at that time mail a copy to the complainant. The answer must set forth the department's response
25 to each ground for and type of relief demanded in the complaint.

26 (4) (a) Except as provided in subsection (4)(b), the board shall conduct the appeal in accordance with
27 the contested case provisions of the Montana Administrative Procedure Act.

28 (b) (i) In an appeal regarding the determination of whether wages earned by an unemployment
29 insurance claimant were properly reported to the department, the appeal must be conducted informally and may,
30 in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a

1 contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the
2 hearing or making its decision, is not bound by the Montana Rules of Evidence.

3 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.

4 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
5 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board
6 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to
7 the extent that it does not conflict with 15-2-303.

8 (6) As used in this section, "interested party" means the claimant, the employer, or the department of
9 labor and industry."

10
11 **Section 38.** Section 15-30-163, MCA, is amended to read:

12 **"15-30-163. Credit for contributions to university system or private college foundations.** (1) ~~An~~
13 ~~individual,~~ A corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a tax
14 credit against taxes imposed by ~~15-30-103 or~~ 15-31-101 in an amount equal to 10% of the aggregate amount
15 of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the
16 Montana university system foundations or a general endowment fund of a Montana private college or its
17 foundation. The maximum credit that a taxpayer may claim in a year under this section is \$500. The credit
18 allowed under this section may not exceed the taxpayer's ~~income~~ tax liability.

19 (2) There is no carryback or carryforward of the credit permitted under this section, and the credit must
20 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

21 (3) (a) For the purposes of this section, "foundation" means a nonprofit organization that is created
22 exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is
23 exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

24 (b) For the purposes of this section, "Montana private college" means a nonprofit private educational
25 institution:

26 (i) whose main campus and primary operations are within the state; and

27 (ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or
28 regional accrediting agency recognized by the board of regents of higher education."

29
30 **Section 39.** Section 15-30-164, MCA, is amended to read:

1 **"15-30-164. Credit for alternative fuel motor vehicle conversion.** (1) (a) Except as provided in
2 subsection (1)(b), ~~an individual~~, a corporation, a partnership, or a small business corporation as defined in
3 15-30-1101 is allowed a tax credit against taxes imposed by ~~15-30-103 or~~ 15-31-101 for equipment and labor
4 costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

5 (b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative
6 fuel that it sells.

7 (2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50%
8 of the equipment and labor costs incurred but the credit may not exceed:

9 (a) \$500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

10 (b) \$1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

11 (3) For the purposes of this section, "alternative fuel" means:

12 (a) natural gas;

13 (b) liquefied petroleum gas;

14 (c) liquefied natural gas;

15 (d) hydrogen;

16 (e) electricity; or

17 (f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any
18 combination of them.

19 (4) (a) The credit allowed under this section may not exceed the taxpayer's ~~income~~ tax liability.

20 (b) There is no carryback or carryforward of the credit permitted under this section, and the credit must
21 be applied in the year the conversion is made, as determined by the taxpayer's accounting method."

22
23 **Section 40.** Section 15-30-246, MCA, is amended to read:

24 **"15-30-246. Policy and purpose.** ~~(1)~~ It is the policy and intent of the legislature that lottery proceeds
25 received by a person who redeems a ticket or chance to win a prize on a ticket or chance purchased in Montana
26 under the provisions of Title 23, chapter 7, is Montana source income, notwithstanding the residence of the
27 person or entity that redeems the ticket. This policy statement affirms that the legislature has always considered
28 lottery proceeds to be Montana source income.

29 ~~(2) The purpose of 15-30-247 is to ensure that lottery proceeds that are Montana source income are~~
30 ~~subject to the withholding tax under the individual income tax laws of the state."~~

1

2 **Section 41.** Section 15-30-1101, MCA, is amended to read:

3 **"15-30-1101. Definition of "small business corporation".** (1) Except as provided in subsection (2),
4 the term "small business corporation" is synonymous with "S. corporation" as defined in ~~15-30-101~~ 15-1-101 and
5 means a corporation for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C.
6 1362) is in effect.

7 (2) A corporation that would otherwise be a small business corporation may continue to be subject to
8 the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

9 (a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter
10 S. corporation election but had not elected to be taxed as a Montana small business corporation;

11 (b) after December 31, 1991, the corporation has not filed as a Montana small business corporation;
12 and

13 (c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income
14 or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax
15 return."

16

17 **Section 42.** Section 15-30-1102, MCA, is amended to read:

18 **"15-30-1102. Income or license tax involving pass-through entities -- information returns**
19 **required.** ~~(1) Except as otherwise provided:~~

20 ~~—— (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;~~

21 ~~—— (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and~~

22 ~~—— (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.~~

23 ~~—— (2)(1) Except as otherwise provided, each partner of a partnership, described in subsection (1)(a); each~~
24 ~~shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, manager,~~
25 ~~member, or other owner of an entity described in subsection (1)(c) a disregarded entity is subject to the taxes~~
26 ~~provided in this chapter, if an individual, and to the taxes provided in Title 15, chapter 31, if a C. corporation.~~

27 ~~(3)(2)~~ (2) Income realized for federal income tax purposes by a financial institution that has elected to be
28 treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its
29 shareholders that is attributable to the financial institution's change from the bad debt reserve method of
30 accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15;

~~this~~ chapter ~~30 or 34~~, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

~~(4)(3)~~ (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file ~~an information~~ a return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file ~~an information~~ a return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each manager, member, or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection ~~(4)(d)(ii)~~ (3)(d)(ii), a pass-through entity that fails to file ~~an~~

information a return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, managers, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection ~~(4)(d)(i)~~ (3)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection ~~(4)(d)(i)~~ (3)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, managers, members, or other owners each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 43. Section 15-30-1112, MCA, is amended to read:

"15-30-1112. Composite returns and tax. (1) A partnership or S. corporation ~~may elect to~~ shall file a composite return and pay a composite tax on behalf of participants. ~~A participant is a~~ each partner, shareholder, manager, or member ~~who:~~

~~—— (a) is a nonresident individual whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, manager, or member; and~~

~~—— (b) consents to be included in the filing.~~

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the ~~rates~~ rate specified in ~~15-30-103~~ 15-31-121, on the ~~sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the~~ participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The ~~electing~~ entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by ~~15-30-244~~ 15-31-502 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity ~~information~~ return. The composite return is in lieu of ~~an individual income~~ the tax return required under ~~15-30-142 and 15-30-144~~ 15-31-111.

(6) The composite tax is in lieu of the tax imposed under ~~15-30-103 and 15-30-105~~ 15-31-121.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 44. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. ~~Consent or withholding~~ Withholding. (1) A pass-through entity that is required to file ~~an information~~ a return as provided in 15-30-1102 and that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall, on or before the due date, including extensions, for the ~~information~~ return:

(a) file a composite return with respect to the individual nonresident; and

~~(b) file an agreement of the individual nonresident to:~~

~~—— (i) file a return in accordance with the provisions of 15-30-142;~~

~~—— (ii) timely pay all taxes imposed with respect to income of the pass-through entity; and~~

~~—— (iii) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or~~

~~—— (e)(b)~~ (b) remit an amount equal to the highest marginal tax rate in effect under ~~15-30-103~~ 15-31-121 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's ~~information~~ return.

~~(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(c) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.~~

~~———(3)(2) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(e) (1)(b) from the partner, shareholder, manager, member, or other owner on whose behalf the payment was made."~~

Section 45. Section 15-30-1121, MCA, is amended to read:

"15-30-1121. Small business option unavailable on dissolution -- exception. In the case of corporation dissolution, ~~no~~ benefits may not be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders ~~unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state."~~

Section 46. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax -- unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

1 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company,
2 mutual or cooperative telephone company, or similar organization of a purely local character, the income of
3 which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting
4 its expenses;

5 (i) cooperative association or corporation engaged in the business of operating a rural electrification
6 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

7 (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting
8 income from the property, and turning over the entire amount of the income, less expenses, to an organization
9 that itself is exempt from the tax imposed by this title;

10 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
11 organized to market association members' wool and sheep, the income of which consists solely of assessments,
12 dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose,
13 does not include expenses and money distributed to members contributing wool and sheep.

14 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions
15 of section 991, et seq., of the Internal Revenue Code, {26 U.S.C. 991, et seq.}, and that has in effect for the
16 entire taxable year a valid election under federal law to be treated as a DISC. ~~If a corporation makes that election~~
17 ~~under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under~~
18 ~~Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for~~
19 ~~all periods for which the election is effective.~~

20 (m) farmers' market association not organized for profit, no part of the net income of which inures to the
21 benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown
22 vegetables, handicrafts, and other products either grown or manufactured by the seller;

23 (n) common trust fund as defined in 26 U.S.C. 584(a);

24 (o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.

25 (2) In determining the license fee to be paid under this part, there may not be included any earnings
26 derived from any public utility managed or operated by any subdivision of the state or from the exercise of any
27 governmental function.

28 (3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code
29 of 1954, {26 U.S.C. 512}, as amended, earned by any exempt corporation resulting in a federal unrelated
30 business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this

1 title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy
2 of its federal exempt organization business income tax return on which it reports its unrelated business income
3 with the department of revenue."
4

5 **Section 47.** Section 15-31-113, MCA, is amended to read:

6 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized
7 in determining the corporation's gross income for federal income tax purposes and:

8 (a) including:

9 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section
10 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

11 (ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate
12 income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may
13 be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana
14 corporate income or license tax under ~~Title 15, this chapter 30 or chapter 31, as appropriate,~~ on the gain passing
15 through to the stockholders pursuant to federal law; and

16 (b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation
17 pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or
18 renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection
19 (1)(a)(ii) of this section.

20 (2) The term "net income" means the gross income of the corporation less the deductions set forth in
21 15-31-114.

22 (3) A corporation is not exempt from the corporation license tax unless specifically provided for under
23 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from
24 the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license
25 tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according
26 to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable
27 year."
28

29 **Section 48.** Section 15-31-131, MCA, is amended to read:

30 **"15-31-131. Credit for dependent care assistance and referral services.** (1) There is a credit against

1 the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax
2 year by the employer for dependent care assistance actually provided to or on behalf of an employee if the
3 assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the
4 requirements of section 129(d)(2) through (6) of the Internal Revenue Code, 26 U.S.C. 129(d)(2) through (d)(6).

5 (2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by
6 the employer during the tax year, but the credit may not exceed \$1,575 of day-care assistance actually provided
7 to or on behalf of the employee.

8 (b) For the purposes of this subsection, marital status must be determined under the rules of section
9 21(e)(3) and (4) of the Internal Revenue Code, 26 U.S.C. 21(e)(3) and (e)(4).

10 (c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is
11 based, with respect to any dependent, must be based upon utilization and the value of the services provided.

12 (3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise
13 due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the
14 employer to provide information and referral services to assist employees of the employer employed within this
15 state to obtain dependent care.

16 (b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or
17 incurred in the tax year.

18 (4) An amount paid or incurred during the tax year of an employer in providing dependent care
19 assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the
20 amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code,
21 26 U.S.C. 129(c)(1) or (c)(2).

22 (5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf
23 of an employee does not qualify for the credit allowed under subsection (1):

24 (a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

25 (b) if the amount is paid or incurred for services not performed within this state.

26 (6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or
27 allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must
28 be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section
29 must be made at the time of filing the tax return.

30 (7) The amount upon which the credit allowed under subsection (1) is based may not be included in the

gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). ~~For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.~~

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(9) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(10) For purposes of the credit allowed under subsection (1) or (3):

(a) the definitions and special rules contained in section 129(e) of the Internal Revenue Code, 26 U.S.C. 129(e), apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state."

Section 49. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

1 (ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

2 (iii) special rules in 26 U.S.C. 41(g) do not apply; and

3 (iv) termination date provided for in 26 U.S.C. 41(h) does not apply.

4 (2) The credit allowed under this section for a tax year may not exceed the tax liability under this chapter
5 ~~30 or 31~~. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

6 (3) The credit allowed under this section may be used as a carryback against taxes imposed under this
7 chapter ~~30 or 31~~ for the 2 preceding tax years and may be used as a carryforward against taxes imposed by this
8 chapter ~~30 or 31~~ for the 15 succeeding tax years. The entire amount of the credit not used in the year earned
9 must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax
10 year.

11 (4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However,
12 any unused credit may be carried back or forward as provided in subsection (3).

13 (5) A corporation, ~~an individual~~, a small business corporation, a partnership, a limited liability
14 partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a
15 small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit
16 must be attributed to the individual shareholders, partners, members, or managers in the same proportion used
17 to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

18 (6) For purposes of calculating the credit, the following definitions apply:

19 (a) "Gross receipts" means:

20 (i) for a corporation that has income from business activity that is taxable only within the state, all gross
21 sales less returns of the corporation for the tax year; and

22 (ii) for a corporation that has income from business activity that is taxable both within and outside of the
23 state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

24 (b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research
25 conducted in Montana.

26 (c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the
27 sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

28 (d) "Supplies" has the meaning provided in 26 U.S.C. 42(b)(2)(C), but includes only those supplies used
29 in the conduct of qualified research in Montana.

30 (e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred

1 for an employee for qualified services performed by the employee in Montana. For a self-employed individual
2 and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

3 (7) The department shall adopt rules, prepare forms, maintain records, and perform other duties
4 necessary to implement this section. In adopting rules to implement this section, the department shall conform
5 the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that
6 the regulations need to be modified to conform to this section."

7
8 **Section 50.** Section 15-31-161, MCA, is amended to read:

9 **"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment.** A
10 corporation is allowed a credit in an amount equal to 13.3% of a charitable gift against the taxes otherwise due
11 under 15-31-101 for charitable contributions made to a qualified endowment, as defined in ~~15-30-165~~ 15-1-101.
12 The maximum credit that may be claimed by a corporation for contributions made from all sources in a year
13 under this section is \$6,600. The credit allowed under this section may not exceed the corporate taxpayer's
14 income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer
15 has included the full amount of the contribution upon which the amount of the credit was computed as a
16 deduction under 15-31-114. ~~There is no~~ A carryback or carryforward of the credit is not permitted under this
17 section, and the credit must be applied to the tax year in which the contribution is made. (Terminates June 30,
18 2003--sec. 11(1), Ch. 24, Sp. L. August 2002.)

19 **15-31-161. (Applicable July 1, 2003) Credit for contribution by corporations to qualified**
20 **endowment.** A corporation is allowed a credit in an amount equal to 26.7% of a charitable gift against the taxes
21 otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in
22 ~~15-30-165~~ 15-1-101. The maximum credit that may be claimed by a corporation for contributions made from all
23 sources in a year under this section is \$13,400. The credit allowed under this section may not exceed the
24 corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a
25 corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit
26 was computed as a deduction under 15-31-114. ~~There is no~~ A carryback or carryforward of the credit is not
27 permitted under this section, and the credit must be applied to the tax year in which the contribution is made.
28 (Terminates April 30, 2004--sec. 11(2), Ch. 24, Sp. L. August 2002.)

29 **15-31-161. (Applicable May 1, 2004) Credit for contribution by corporations to qualified**
30 **endowment.** A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes

otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in ~~15-30-165~~ 15-1-101. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is \$10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. ~~There is no~~ A carryback or carryforward of the credit is not permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

Section 51. Section 15-31-162, MCA, is amended to read:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in ~~15-30-165~~ 15-1-101, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for ~~Montana~~ federal income tax purposes. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is \$6,600, ~~subject to the limitations in 15-30-166(2).~~ The credit allowed under this section may not exceed the taxpayer's income tax liability. ~~There is no~~ A carryback or carryforward of the credit is not permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates June 30, 2003--sec. 11(1), Ch. 24, Sp. L. August 2002.)

15-31-162. (Applicable July 1, 2003) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in ~~15-30-165~~ 15-1-101, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity

1 qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or
2 members or managers of a limited liability company in the same proportion used to report the corporation's,
3 partnership's, or limited liability company's income or loss for ~~Montana~~ federal income tax purposes. The credit
4 allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of
5 the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. The
6 maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or
7 manager of a limited liability company may claim in a year is \$13,400, ~~subject to the limitations in 15-30-166(2).~~
8 The credit allowed under this section may not exceed the taxpayer's income tax liability. ~~There is no A~~ carryback
9 or carryforward of the credit is not permitted under this section, and the credit must be applied to the tax year
10 in which the contribution is made. (Terminates April 30, 2004--sec. 11(2), Ch. 24, Sp. L. August 2002.)

11 **15-31-162. (Applicable May 1, 2004) Small business corporation, partnership, and limited liability**
12 **company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined
13 in ~~15-30-165~~ 15-1-101, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited
14 liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be
15 allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity
16 qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or
17 members or managers of a limited liability company in the same proportion used to report the corporation's,
18 partnership's, or limited liability company's income or loss for ~~Montana~~ federal income tax purposes. The credit
19 allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of
20 the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. The
21 maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or
22 manager of a limited liability company may claim in a year is \$10,000, ~~subject to the limitations in 15-30-166(2).~~
23 The credit allowed under this section may not exceed the taxpayer's income tax liability. ~~There is no A~~ carryback
24 or carryforward of the credit is not permitted under this section, and the credit must be applied to the tax year
25 in which the contribution is made. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

26
27 **Section 52.** Section 15-32-102, MCA, is amended to read:

28 **"15-32-102. Definitions.** As used in this part, the following definitions apply:

29 (1) "Alternative energy system" means the generation system or equipment used to convert energy
30 sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low

1 emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and
2 other recognized nonfossil forms of energy generation.

3 (2) "Building" means:

4 (a) a single or multiple dwelling, including a mobile home or manufactured home; or

5 (b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and
6 a roof.

7 (3) "Capital investment" means any material or equipment purchased and installed in a building or land
8 with or without improvements.

9 (4) "Energy conservation purpose" means one or both of the following results of an investment:

10 (a) reducing the waste or dissipation of energy; or

11 (b) reducing the amount of energy required to accomplish a given quantity of work.

12 (5) "Geothermal system" means a system that transfers energy either from the ground, by way of a
13 closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential
14 building.

15 (6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

16 (a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

17 (ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the
18 standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the
19 department of environmental quality pursuant to 15-32-203; or

20 (iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method
21 for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by
22 the department of environmental quality pursuant to 15-32-203; or

23 (b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams
24 per hour when tested in conformance with the standard method for measuring the emissions and efficiencies
25 of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

26 (7) "Passive solar system" means a direct thermal energy system that uses the structure of a building
27 and its operable components to provide heating or cooling during the appropriate times of the year by using the
28 climate resources available at the site. It includes only those portions and components of a building that are
29 expressly designed and required for the collection, storage, and distribution of solar energy and that are not
30 standard components of a conventional building.

(8) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, including electricity,

by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste;

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel; or

(vii) an alternative energy system;

(b) a system that produces electric power from biomass or solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 53. Section 15-32-104, MCA, is amended to read:

"15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 and 15-32-109 is limited to:

(1) capital investments made after January 1, 1975;

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and

(3) a ceiling of \$100,000 in tax savings per year to any one person or firm."

Section 54. Section 15-32-106, MCA, is amended to read:

"15-32-106. Procedure for obtaining benefit of deduction or credit. ~~The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 that demonstrably promotes energy conservation or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of environmental quality for its advice, and the department of environmental quality shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of administration for its advice, and the~~

department of administration shall respond within 60 days. The department of revenue may deny a deduction or credit that it finds to be impractical or ineffective."

Section 55. Section 15-32-303, MCA, is amended to read:

"15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer. In addition to all other deductions from ~~adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from~~ gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct expenditures for organic fertilizer and inorganic fertilizer produced as a byproduct produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

Section 56. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit -- alternative energy systems.

(1) ~~An individual;~~ A corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by ~~15-30-103 or~~ 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

- 1 (b) safety devices and storage components;
2 (c) transmission lines necessary to connect with existing transmission facilities; and
3 (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other
4 transmission facilities are available.

5 (3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the
6 state or federal government for the system."
7

8 **Section 57.** Section 15-32-403, MCA, is amended to read:

9 **"15-32-403. Limitation on credit.** (1) Except as provided in subsection (2), whenever any federal wind
10 energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under
11 section 48(a) of the Internal Revenue Code (~~26~~ U.S.C. 48(a))₁ or any other federal law, the state credit allowed
12 by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60%
13 of the eligible costs.

14 (2) ~~An individual,~~ A corporation, partnership, or small business corporation, as defined in 15-30-1101,
15 is exempt from the provisions of subsection (1) of this section if the ~~individual,~~ corporation, partnership, or small
16 business corporation:

17 (a) (i) invests in a commercial system located within the exterior boundaries of a Montana Indian
18 reservation, which commercial system is 5 megawatts or larger in size;

19 (ii) signs an employment agreement with the tribal government of the reservation where the commercial
20 system would be constructed regarding the training and employment of tribal members in the construction,
21 operation, and maintenance of the commercial system; and

22 (iii) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's
23 net generating output at the cost of production plus a reasonable rate of return as designated by the public
24 service commission to customers for use within the state of Montana; or

25 (b) (i) invests in a commercial system located on state trust land;

26 (ii) signs a lease agreement with the state to make annual lease payments to the permanent school trust
27 fund; and

28 (iii) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's
29 net generating output at the cost of production plus a rate of return not to exceed 12%.

30 (3) The cost of production must be determined by dividing the cost and operation of the commercial

1 system over an appropriate time period by the kilowatt-hour output of the system."

2
3 **Section 58.** Section 15-32-404, MCA, is amended to read:

4 **"15-32-404. Carryover of credit.** (1) The tax credit allowed under 15-32-402 is to be deducted from
5 that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment
6 invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability
7 for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's
8 tax liability in the next succeeding tax year or years until the total amount of the tax credit, subject to the limitation
9 of 15-32-403, has been deducted from tax liability. However, except as provided in subsection (2), a credit may
10 not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in
11 service.

12 (2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment
13 was placed in service if ~~an individual~~, a corporation, partnership, or small business corporation, as defined in
14 15-30-1101:

15 (a) invests in a commercial system located within the exterior boundaries of a Montana Indian
16 reservation, which commercial system is 5 megawatts or larger in size; and

17 (b) signs an employment agreement with the tribal government of the reservation where the commercial
18 system would be constructed regarding the training and employment of tribal members in the construction,
19 operation, and maintenance of the commercial system."

20
21 **Section 59.** Section 15-32-405, MCA, is amended to read:

22 **"15-32-405. Exclusion from other tax incentives.** If a credit is claimed for an investment pursuant to
23 this part, ~~no other~~ another state energy or investment tax credit, including but not limited to the tax credits
24 allowed by ~~15-30-162~~ and 15-31-123 through 15-31-125, may not be claimed for the investment. Property tax
25 reduction allowed by 15-6-201(3) may not be applied to a facility for which a credit is claimed pursuant to this
26 part."

27
28 **Section 60.** Section 15-32-502, MCA, is amended to read:

29 **"15-32-502. Definitions.** For purposes of this part, the following definitions apply:

30 (1) (a) "Certified expenditures" means those costs incurred for activities in direct support of exploration

1 activity conducted at a specific exploration site for the purpose of determining the existence, location, extent,
2 or quality of a mineral or coal deposit. The term includes:

3 (i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity
4 referred to in 15-32-503;

5 (ii) direct labor costs and the cost of benefits for employees directly associated with work described in
6 15-32-503;

7 (iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and
8 taking the credit;

9 (iv) the reasonable costs of owning, maintaining, and operating equipment;

10 (v) insurance and bond premiums associated with the activities set out in subsections (1)(a)(i) through
11 (1)(a)(vii);

12 (vi) payments to consultants and independent contractors; or

13 (vii) the general expense of operating the person's business, including the costs of materials and
14 supplies, if those expenses and costs are directly attributable to the work described in 15-32-503.

15 (b) The term does not include return on investment, insurance or bond premiums not covered under
16 subsection (1)(a)(v), or any other expense that the person has not incurred to complete work described in
17 15-32-503.

18 (2) "Credit" means the exploration incentive credit for activities involving mineral and coal deposits
19 authorized by this part.

20 (3) "Exploration activity data list" means, as applicable, a summary of work completed during the year
21 that includes but is not limited to:

22 (a) the number of core or rotary drilling holes completed;

23 (b) chemical analytical data available; or

24 (c) aerial photographs or a topographic or geologic map showing the location of the drill holes, sample
25 locations, or the other exploration activities undertaken.

26 (4) "Geochemical methods" means geochemical data gathering methods, including the collection of soil,
27 rock, water, air, vegetation, and similar samples and their chemical analyses.

28 (5) "Geophysical methods" means all geophysical data gathering methods used in mineral or coal
29 exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote
30 sensing measurements.

(6) "Mineral" means those substances defined as minerals by 82-4-303 and coal as defined by 82-1-111.

(7) (a) "Mining operation" includes all operating and nonoperating activities related to a mineral deposit interest and may be composed of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines, transportation equipment, and mining techniques and technology and may also consider the extent to which the mineral deposit interest comprises a common mining property.

(8) "Person" means a ~~sole proprietorship~~, corporation, partnership, small business corporation as defined in 15-30-1101, or limited liability company as defined in 35-8-102.

(9) "Tax year" means the calendar year."

Section 61. Section 15-32-503, MCA, is amended to read:

"15-32-503. Exploration incentive credit. (1) The department shall grant to a person a credit against the person's tax liability under Title 15, chapter 30 or 31, for the certified expenditures of each of the following exploration activities that are performed on land in the state for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

- (a) surveying by geophysical or geochemical methods;
- (b) drilling exploration holes;
- (c) conducting underground exploration;
- (d) surface trenching and bulk sampling; or
- (e) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), "construction commencement date of a new mine" means the date no later than which all of the following have occurred:

- (i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights

1 in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a
2 reasonable and prudent person would consider adequate to commence construction of a mine in the expectation
3 that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be
4 obtained;

5 (ii) all approvals, permits, licenses, and certificates are in full force and effect and without any
6 modification that might jeopardize the completion or continued construction of the mine; and

7 (iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency
8 enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is
9 not in effect.

10 (3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted
11 under subsection (1) for exploration activity for a mine that had previously operated, that has ceased to operate,
12 and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous
13 operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration
14 activity that occurs after the mine reopening date. For the purposes of this subsection (3), "mine reopening date"
15 means the date not later than which all of the following have occurred:

16 (a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights
17 in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a
18 reasonable and prudent person would consider adequate to commence operation of the former mine in the
19 expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the
20 facilities will be obtained;

21 (b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect
22 and without any modification that might jeopardize the reopening of the former mine; and

23 (c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency
24 enjoining, either temporarily or permanently, the reopening of the former mine is not in effect."
25

26 **Section 62.** Section 15-32-505, MCA, is amended to read:

27 **"15-32-505. Application of credit.** (1) In a tax year, a person may take a credit that was approved
28 under 15-32-504 against taxes payable by the person. The credit may not exceed 50% of the person's tax
29 liability under either Title 15, chapter 30 or 31; for the tax year that is related to production from the mining
30 operation at which the exploration activities occurred.

(2) If a person applies the credit against the person's tax liability under subsection (1), the department shall disallow application of the credit under that provision unless the person files with the person's tax return an accounting of the person's exploration activities for each mining operation that is included in the tax return and as to which the credit is being applied. The accounting of exploration activities required by this subsection must be made on a form prescribed by the department. On the form, the person shall:

(a) identify the mining operations for which the credit is claimed; and

(b) set out the gross income attributable to the mining operations and other information about the mining operations that the department may require.

(3) A person may not apply the credit under this section if the application, when added to credits previously applied under this section, would exceed the total amount of the credits approved under 15-32-504."

Section 63. Section 15-32-510, MCA, is amended to read:

"15-32-510. Deduction for donation of exploration information. (1) In addition to all other deductions from ~~adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from~~ gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct documented expenses for the donation of mineral exploration information generated as part of the certified expenditures. The information must be donated to the Montana tech foundation to reside as part of the Montana tech research library, and the documented expenses must be based on the cost of recreating the donated information.

(2) The Montana tech foundation has the right to limit information accepted and deductions granted to that exploration activity data that is needed as part of the Montana tech research library.

(3) A deduction under this section may not exceed 20% of the actual value of the data if a tax credit for the same exploration activity data is taken under this part."

Section 64. Section 15-32-602, MCA, is amended to read:

"15-32-602. (Temporary) Amount and duration of credit -- how claimed. (1) ~~An individual, A~~ corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter ~~30~~ or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

(a) 25% of the cost of the property on the first \$250,000 invested;

(b) 15% of the cost of the property on the next \$250,000 invested; and

(c) 5% of the cost of the property on the next \$500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of \$1 million. (Terminates December 31, 2005--secs. 5, 7, Ch. 398, L. 2001.)"

Section 65. Section 15-32-610, MCA, is amended to read:

"15-32-610. (Temporary) Deduction for purchase of recycled material. In addition to all other deductions from ~~adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from~~ gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. (Terminates December 31, 2005--secs. 5, 7, Ch. 398, L. 2001.)"

Section 66. Section 15-33-106, MCA, is amended to read:

"15-33-106. Capital gains -- dividends exempted. Any capital gains or dividend income realized by ~~an individual or~~ a corporation from an investment in an SBIC organized in accordance with this part is exempt from taxation under the provisions of ~~Title 15, chapters 30 and~~ chapter 31."

Section 67. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes -- credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license or income tax provided for in chapter 31 of this title ~~or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under~~

1 ~~the laws of the state.~~

2 (2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated
3 capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles,
4 as provided in 61-3-560 through 61-3-562, paid in Montana on any personal property or vehicle of the contractor
5 that is used in the business of the contractor and is located within this state may be credited against the license
6 fees required under this chapter. However, in computing the tax credit allowed by this section against the
7 contractor's corporation license tax or income tax, the tax credit against the license fees required under this
8 chapter may not be considered as license fees paid for the purpose of the ~~income tax or corporation license or~~
9 income tax credit."

10
11 **Section 68.** Section 15-61-204, MCA, is amended to read:

12 **"15-61-204. Administration of account.** (1) (a) An account administrator shall administer the medical
13 care savings account from which the payment of claims is made and, except as provided in subsection (1)(b),
14 has a fiduciary duty to the person for whose benefit the account is administered.

15 (b) Except for reporting and remitting of penalties to the department of revenue, a financial institution
16 shall administer a medical savings account as a regular deposit or share account and has the same rights and
17 duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other
18 provision of this chapter, a financial institution is not responsible for determining whether a medical expense is
19 eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals
20 are for eligible and nonreimbursable medical expenses.

21 (2) Not more than 30 days after an account administrator begins to administer an account, the account
22 administrator shall notify in writing each employee and account holder on whose behalf the account administrator
23 administers an account of the date of the last business day of the account administrator's business year.

24 (3) An account administrator may use funds held in a medical care savings account only for the purpose
25 of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's
26 dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the
27 employee or account holder or a dependent of the employee or account holder, or paying the expenses of
28 administering the account. Funds held in a medical care savings account may not be used to pay medical
29 expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent
30 of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant

1 to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another
2 health coverage policy, certificate, or contract.

3 (4) The employee or account holder may submit documentation of eligible medical expenses paid by
4 the employee or account holder or a dependent of the employee or account holder in the tax year to the account
5 administrator, and the account administrator shall reimburse the employee or account holder from the
6 employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal
7 from a medical savings account was made for an eligible medical expense is upon the account holder and not
8 upon the account administrator or the employer of the account holder.

9 (5) The employee or account holder may submit documentation of the purchase of long-term care
10 insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or
11 account holder to the account administrator, and the account administrator shall reimburse the employee or
12 account holder from the employee's or account holder's account for payments made for the purchase of the
13 insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from
14 the account for the payment of long-term care insurance premiums or an annuity.

15 (6) If an employer makes contributions to a medical care savings account on a periodic installment
16 basis, the employer may advance to an employee, interest free, an amount necessary to cover medical
17 expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the
18 expense is incurred if the employee agrees to repay the advance from future installments or when the employee
19 ceases employment with the employer.

20 (7) In the case of an account administrator who is also the account holder or an employee:

21 (a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

22 (b) the account administrator may not use funds held in an account to pay expenses of administering
23 the account, except that a service fee may be deducted from the account by a financial institution or other holder
24 of the account;

25 (c) documentation of eligible medical expenses must be maintained but is not required to be submitted
26 to the account administrator;

27 (d) contributions to a medical savings account must be established in a separate account and be
28 segregated from other funds;

29 (e) the account holder is subject to the same yearend reporting requirements as all other account
30 administrators; and

(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

Section 69. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103, as that section read on December 31, 2002, on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(8), as that section read on December 31, 2002.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) ~~(a)~~ The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on ~~the income tax return of the account owner forms provided by the department~~ and is payable ~~with the income tax payment for on or before December 31 of the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal~~. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

~~(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.~~

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are

1 presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that
2 all or a portion of the contributions did not reduce adjusted gross income. ~~Contributors who claim deductions~~
3 ~~for contributions shall report on their Montana income tax returns the amount of deductible contributions made~~
4 ~~to accounts for each designated beneficiary and the social security number of each designated beneficiary.~~

5 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
6 nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

7 (a) April 30, 2001; or

8 (b) the date that is 3 years prior to the date of the withdrawal or distribution.

9 (6) The department shall use all means available for the ~~administration and enforcement of income tax~~
10 ~~laws in the administration and enforcement of this section.~~"

11
12 **Section 70.** Section 15-63-202, MCA, is amended to read:

13 **"15-63-202. Tax exemption -- conditions Contributions -- limits -- administration.** (1) Except as
14 provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account
15 holder to an account and all interest or other income on the principal may be excluded from the adjusted gross
16 income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the
17 principal and interest or other income is contained within the account or withdrawn only for eligible costs for the
18 purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both,
19 withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is
20 withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a
21 single-family residence.

22 ~~———— (2) (a) An account holder who files singly, head of household, or married filing separately may exclude~~
23 ~~as an annual contribution in 1 year up to \$3,000.~~

24 ~~———— (b) An account holder who files jointly may exclude as annual contribution in 1 year up to \$6,000.~~

25 ~~———— (c)(1) (a) There is no limitation on the amount of principal and interest or other income on the principal~~
26 ~~that may be retained tax-free within an account.~~

27 ~~(d)(b)~~ (b) An account holder may not contribute to the first-time home buyer savings account for a period
28 exceeding 10 years.

29 (3) ~~An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an~~
30 ~~amount representing a loss in the value of an investment contained in an account.~~

~~———— (4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.~~

~~———— (5)(2) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section is allowable. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.~~

~~———— (6)(3) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.~~

~~(7)(4) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.~~

~~———— (8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.~~

~~———— (9)(5) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."~~

Section 71. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of

1 which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise
2 or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred
3 for the project or enterprise for the coal tax investment that was made to the business enterprise or person must
4 be held by a commercial lender. This subsection does not:

5 (a) apply to a loan made pursuant to 17-6-317;

6 (b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);

7 (c) apply to the purchase of debentures issued by a capital company. However, the total amount of
8 debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time
9 of purchase.

10 (2) The total amount of loans made pursuant to 17-6-309(2) or 17-6-317 may not exceed \$50 million,
11 and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not
12 exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant
13 to 17-6-309(2), the board shall consider:

14 (a) the estimated number of jobs to be created by the project within a 4-year period from the time that
15 the loan is made and the impact of the jobs on the state and the community where the project will be located;

16 (b) the long-term effect of corporate and personal income taxes estimated to be paid by the business
17 and its employees;

18 (c) the current and projected ability of the community to provide necessary infrastructure for economic
19 and community development purposes;

20 (d) the amount of increased salaries, wages, and business incomes of existing jobholders and
21 businesses; and

22 (e) other matters that the board considers necessary."
23

24 **Section 72.** Section 17-6-316, MCA, is amended to read:

25 **"17-6-316. Economic development loan -- infrastructure tax credit.** (1) A loan made pursuant to
26 17-6-309(2) must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer
27 systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation
28 of a business in Montana. The loan must be made to a local government that will create the necessary
29 infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan
30 may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of

1 the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made
2 pursuant to 17-6-309(2) qualify for the job credit interest rate reductions under 17-6-318 if the interest rate
3 reduction passes through to the business creating the jobs.

4 (2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the
5 condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received
6 pursuant to subsection (3) of this section must be returned to the state.

7 (3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and
8 subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter ~~30-01~~ 31, for the
9 portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not
10 exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years."

11
12 **Section 73.** Section 17-6-602, MCA, is amended to read:

13 **"17-6-602. Definitions.** As used in this part, the following definitions apply:

14 (1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons
15 by the state through any program of benefits, services, or coverage, including ~~income~~ tax incentives.

16 (2) "Health care" has the meaning provided in 50-16-504.

17 (3) (a) "Programs for tobacco disease prevention" means programs of services administered by the
18 state for the purposes of informing individuals of the health risks of tobacco use and exposure to secondhand
19 tobacco smoke, assisting persons in the avoidance of tobacco products use, and assisting individuals in
20 cessation of tobacco use.

21 (b) Programs for tobacco disease prevention include:

22 (i) community-based education programs;

23 (ii) American Indian community tobacco education programs;

24 (iii) general public awareness and education programs;

25 (iv) tobacco cessation services;

26 (v) a tobacco use resource center;

27 (vi) special education and cessation programs to reach youth and women of childbearing age;

28 (vii) smokeless tobacco user programs; and

29 (viii) advertising issue programs.

30 (4) "Tobacco products" means a substance intended for human use that contains tobacco and includes

1 but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

2 (5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4,
3 of the Montana constitution and implemented through this part."

4
5 **Section 74.** Section 17-7-111, MCA, is amended to read:

6 **"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and**
7 **contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state
8 need information that is consistent and accurate. Necessary information includes detailed disbursements by fund
9 type for each agency and program for the appropriate time period, recommendations for creating a balanced
10 budget, and recommended disbursements and estimated receipts by fund type and fund category.

11 (b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall
12 by agreement:

13 (i) establish necessary standards, formats, and other matters necessary to share information between
14 the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget;
15 and

16 (ii) provide for the collection and provision of budgetary and financial information that is in addition to
17 or different from the information otherwise required to be provided pursuant to this section.

18 (2) In the preparation of a state budget, the budget director shall, not later than the date specified in
19 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget
20 estimates by the budget director. These forms must be prescribed by the budget director to procure the
21 information required by subsection (3). The forms must be submitted to the budget director by the date provided
22 in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in
23 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this
24 section or the instructions given for completing the forms.

25 (3) The agency budget request must set forth a balanced financial plan for the agency completing the
26 forms for each fiscal year of the ensuing biennium. The plan must consist of:

27 (a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that
28 transfer profits to the general fund or to an account subject to appropriation for the current base budget
29 expenditures, including statutory appropriations, and for each present law adjustment and new proposal request
30 setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing

1 a balance between the total proposed disbursements and the total anticipated receipts, together with the other
2 means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding
3 figures for the last completed fiscal year and the fiscal year in progress;

4 (b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the
5 current biennium and estimated for the subsequent biennium;

6 (c) a statement of the agency mission and a statement of goals and objectives for each program of the
7 agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable
8 information to enable the legislature to formulate an appropriations policy regarding the agency and its programs
9 and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals
10 and objectives.

11 (d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE
12 and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

13 (e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements
14 for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement
15 category;

16 (f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general
17 appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the
18 budget director. Each agency plan must include base budget reductions that reflect the required percentage
19 reduction by fund type for the general fund and state special revenue fund types. The plan must include:

20 (i) a prioritized list of services that would be eliminated or reduced;

21 (ii) for each service included in the prioritized list, the savings that would result from the elimination or
22 reduction; and

23 (iii) the consequences or impacts of the proposed elimination or reduction of each service.

24 (g) a reference for each new information technology proposal stating whether the new proposal is
25 included in the approved agency information technology plan as required in 2-17-523; and

26 (h) other information the budget director feels is necessary for the preparation of a budget.

27 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with
28 17-7-112:

29 (a) detailed recommendations for the state long-range building program. Each recommendation must
30 be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in 2-17-526.

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

~~(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."~~

Section 75. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory

1 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
2 the need for a biennial legislative appropriation or budget amendment.

3 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
4 of the following provisions:

5 (a) The law containing the statutory authority must be listed in subsection (3).

6 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;
9 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706;
10 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; section 6; 17-3-106; 17-3-212; 17-3-222;
11 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305;
12 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612;
13 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623;
14 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518;
15 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

16 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
17 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
18 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
19 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
20 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
21 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
22 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,
23 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
24 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
25 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710
26 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December
27 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

28
29 **Section 76.** Section 19-2-1004, MCA, is amended to read:

30 **"19-2-1004. Exemption from ~~taxes and legal process~~.** Except as provided in 19-2-907 and 19-2-909,

1 the right of a person to any benefit or payment from a retirement system or plan and the money in the system
2 or plan's pension trust fund is not:

3 (1) subject to execution, garnishment, attachment, or any other process; or

4 ~~(2) subject to state, county, or municipal taxes except for:~~

5 ~~—— (a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined pursuant~~
6 ~~to 15-30-111(2)(c)(ii); or~~

7 ~~—— (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as~~
8 ~~provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or~~

9 ~~—— (3)(2) assignable except as specifically provided in this chapter."~~

10
11 **Section 77.** Section 19-17-407, MCA, is amended to read:

12 **"19-17-407. Exemption from ~~taxation and legal process.~~ (1) The first \$3,600 or the amount**
13 **determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and**
14 **municipal taxation.**

15 ~~—— (2) Except as provided in 19-2-907 and 19-2-909, benefits received under this part are not subject to~~
16 ~~execution, garnishment, attachment, or any other process."~~

17
18 **Section 78.** Section 19-18-612, MCA, is amended to read:

19 **"19-18-612. Protection of benefits from legal process and taxation -- nonassignability. (1) Except**
20 **for execution or withholding for the payment of child support or for the payment of spousal support for a spouse**
21 **or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are**
22 **not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may**
23 **not assign the right, and the association and trustees may not recognize any assignment or pay over any sum**
24 **assigned.**

25 ~~(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under~~
26 ~~this part is exempt from state, county, and municipal taxation."~~

27
28 **Section 79.** Section 19-19-504, MCA, is amended to read:

29 **"19-19-504. Protection of benefits from legal process and taxation. (1) Except for execution or**
30 **withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse**

1 who is the custodial parent of the child, the benefits provided for in this part are not subject to execution,
2 garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are
3 unassignable except as specifically provided in 19-19-505.

4 ~~(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under~~
5 ~~this part is exempt from state, county, and municipal taxation."~~

6
7 **Section 80.** Section 19-20-706, MCA, is amended to read:

8 **"19-20-706. Exemption from ~~taxation and legal process~~.** Except as provided in 19-20-305 and
9 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the
10 provisions of the retirement system and the accumulated contributions and cash and securities in the various
11 funds of the retirement system are:

12 ~~(1) exempted from any state, county, or municipal tax of the state of Montana except for:~~

13 ~~—— (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant~~
14 ~~to 15-30-111(2)(c)(ii); or~~

15 ~~—— (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June~~
16 ~~30, 1985, as provided in 19-20-602;~~

17 ~~—— (2)(1) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or~~
18 ~~equity, or any other process; and~~

19 ~~(3)(2) unassignable except as specifically provided in this chapter."~~

20
21 **Section 81.** Section 19-21-212, MCA, is amended to read:

22 **"19-21-212. Exemption from ~~taxation, legal process, and assessments~~.** Except for execution or
23 withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse
24 who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement
25 program and the earnings on the contributions are:

26 ~~(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined~~
27 ~~pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;~~

28 ~~—— (2)(1) not subject to execution, garnishment, attachment, or other process;~~

29 ~~(3)(2) not covered or assessable by an insurance guaranty association; and~~

30 ~~(4)(3) unassignable except as specifically provided in the contracts."~~

1

2 **Section 82.** Section 19-50-101, MCA, is amended to read:

3 **"19-50-101. Definitions.** For the purposes of this chapter, unless a different meaning is plainly implied
4 by the context, the following definitions apply:

5 (1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or
6 an appropriate officer of a political subdivision.

7 (2) "Deferred compensation" means that income which an employee may legally defer in a deferred
8 compensation plan established under this chapter pursuant to the rulings of the internal revenue service and
9 which, while invested, is exempt from ~~state and~~ federal income tax on the employee's contribution and on the
10 interest, dividends, and capital gains until ultimately distributed to the employee.

11 (3) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the
12 Internal Revenue Code.

13 (4) "Employee" means any person, including independent contractors and elected officials, receiving
14 compensation from the state or a political subdivision for performing services.

15 (5) "Fund" means the state deferred compensation investment account.

16 (6) "Participant" means an employee enrolled in the plan.

17 (7) "Political subdivision" means any city, town, county, or other political subdivision of the state of
18 Montana."

19

20 **Section 83.** Section 20-25-503, MCA, is amended to read:

21 **"20-25-503. Presumptions and rules as to domicile.** (1) Unless the contrary appears to the unit
22 registering authority, it is presumed the domicile of a minor is that:

23 (a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent
24 having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides;
25 or

26 (b) of the minor's guardian when the court appointing the guardian certifies that the primary purpose
27 of the appointment is not to qualify the minor as a resident of this state.

28 (2) A resident student who marries a nonresident does not by that fact alone lose resident status for
29 tuition and fee purposes for a period of 4 years after marriage.

30 (3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if the person is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; and

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult's spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the state of Montana and ~~files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and~~ renounces residency in any other state and is not in the state primarily as a student, the person's spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 84. Section 20-25-504, MCA, is amended to read:

"20-25-504. Evidence as to domiciliary intent -- changes in status. (1) To determine the domicile of a person, the units of the system shall ~~apply the following rules:~~

~~—— (a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.~~

~~—— (b) A person must intend consider whether the person intends to establish a domicile in Montana.~~

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence shall be filed with the registering authority of the unit. Changes in classification shall be in writing signed by the registering authority and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents or the parent having legal custody or,

1 if neither parent has legal custody, the parent with whom he customarily resides or legal guardian or person
2 having legal custody completes the requirements for establishing domicile heretofore set forth.

3 (4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a
4 change in his or his dependent's classification for tuition and fee purposes unless he completes 12 continuous
5 months of residence while not attending a unit of the system or other institution of higher learning or while
6 serving in the armed forces.

7 (5) Any student whose request for classification as a resident student is denied has the right of appeal
8 to the executive secretary of the Montana university system. Immediately upon rejection and at the request of
9 the student, the registering authority shall forward a copy of his decision and a complete file on the student to
10 the executive secretary. The executive secretary may accept other evidence of residence from either the
11 student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the
12 registering authority, the executive secretary shall determine the resident status of the student and shall notify
13 the student and the registering authority of his decision. The executive secretary's decision may be appealed
14 to the regents if the regents agree to entertain such an appeal."

15
16 **Section 85.** Section 33-27-101, MCA, is amended to read:

17 "**33-27-101. Short title.** Sections ~~15-30-107, 15-30-127,~~ 15-31-117; and 15-31-118; and this chapter
18 may be cited as the "Independent Liability Fund Act"."

19
20 **Section 86.** Section 33-27-102, MCA, is amended to read:

21 "**33-27-102. Purpose.** The purpose of ~~15-30-107, 15-30-127,~~ 15-31-117, 15-31-118, and this chapter
22 is to create a means by which small businesses operating in Montana may establish independent liability funds
23 to set aside assets or make investments to meet any liability claims that might be made against the small
24 businesses by third parties."

25
26 **Section 87.** Section 33-27-103, MCA, is amended to read:

27 "**33-27-103. Definitions.** As used in ~~15-30-107, 15-30-127,~~ 15-31-117, 15-31-118, and this chapter,
28 the following definitions apply:

29 (1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing
30 its Montana ~~individual income tax,~~ corporate license tax; or corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, except workers' compensation claims, brought against it by third parties.

(3) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

(5) "Third party" means a person other than an employee or the management of a small business or of a subsidiary or closely related enterprise of a small business."

Section 88. Section 37-4-104, MCA, is amended to read:

"37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative -- restrictions. (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the

1 actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered
2 to a patient;

3 (b) "disabled" ~~has the same meaning as provided for the term "permanently and totally disabled" in~~
4 ~~15-30-114~~ means unable to engage in any substantial gainful activity by reason of any medically determined
5 physical or mental impairment lasting or expected to last at least 12 months; and

6 (c) "personal representative" of the estate of a deceased dentist has the same meaning as provided
7 for the term in 72-1-103.

8 (4) The 12-month period provided for in subsection (1) begins when:

9 (a) the personal representative of the estate of a deceased dentist files a verified copy of the death
10 certificate of the deceased with the department; or

11 (b) the personal representative of the disabled dentist files a verified copy of a document signed by a
12 licensed physician that attests to the dentist's disability."

13
14 **Section 89.** Section 39-51-1109, MCA, is amended to read:

15 **"39-51-1109. Tax appeals -- procedure.** (1) A decision, determination, or redetermination of the
16 department involving an employer-employee relationship or the charging of benefit payments to employers is
17 final unless an interested party entitled to notification submits a written appeal of the decision, determination,
18 or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

19 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,
20 application for refund, subject wages, or other tax-related issues must be issued by the department of revenue
21 as provided in Title 15, chapter 1, part 2; ~~and 15-30-257, if applicable.~~ The decision is final unless an interested
22 party entitled to notification follows the uniform dispute review procedures as prescribed in 15-1-211 ~~and~~
23 ~~15-30-257, if applicable."~~

24
25 **Section 90.** Section 39-51-1301, MCA, is amended to read:

26 **"39-51-1301. Penalty and interest on past-due reports and taxes.** (1) Failure to file reports and
27 payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an
28 employer to penalty and interest, as provided by 15-1-216.

29 (2) (a) There is an account in the federal special revenue fund. Penalties and interest collected for
30 unemployment insurance obligations are distributed as provided in ~~15-30-250~~ subsections (2)(b) and (2)(c) and

1 must be deposited in that account. Money deposited in that account and appropriated to the department or
2 transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department
3 or its delegate to administer this chapter, including the detection and collection of unpaid taxes and
4 overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this
5 purpose. Money in the account not appropriated for these purposes must be transferred by the department to
6 the unemployment insurance trust fund at the end of each fiscal year.

7 (b) Except as provided by rule, tax payments including delinquent tax, penalty, and interest must be
8 applied to the taxpayer's account, prorated on the basis of the amount of each tax due to the amount of the total
9 tax due, and distributed to the appropriate fund accounts as required by law.

10 (c) Payment of a penalty assessed for late filing of a report for which there is no tax due for the period
11 must be applied to the employer's liability for the penalties and equally distributed to the fund accounts specified
12 by law among the tax types the report covers.

13 (3) All money accruing to the unemployment insurance trust fund from interest and penalties collected
14 on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance
15 benefits and may not be used for any other purpose."
16

17 **Section 91.** Section 39-51-2402, MCA, is amended to read:

18 **"39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
19 department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the
20 deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy
21 will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit
22 amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall
23 make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. With respect to a
24 determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in
25 accordance with procedures for unemployment insurance benefit claimant appeals as prescribed in 15-2-302
26 ~~and 15-30-257~~. The deputy shall promptly notify the claimant and any other interested party of the decision and
27 the reasons for reaching the decision.

28 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and
29 other interested parties of the amended decision and the reasons for the decision.

30 (3) A determination or redetermination of an initial or additional claim may not be made under this

1 section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is
2 mailed to each interested party.

3 (4) A determination or redetermination is final unless an interested party entitled to notice of the decision
4 applies for reconsideration of the determination or appeals the decision within 10 days after the notification was
5 mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

6 (5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after
7 2 years from the date of the initial determination.

8 (6) A redetermination may be made within 3 years from the date of the initial determination of a claim
9 if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact
10 by the claimant or the employer."

11
12 **Section 92.** Section 53-2-211, MCA, is amended to read:

13 **"53-2-211. Department to share eligibility data.** (1) The department shall make available to the
14 unemployment compensation program of the department of labor and industry all information contained in its
15 files and records pertaining to eligibility of persons for medicaid, financial assistance and nonfinancial
16 assistance, as defined in 53-2-902, and food stamps. The information made available must include information
17 on the amount and source of an applicant's income. The information received from the department must be used
18 by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits
19 under the unemployment compensation program of the state and for no other purpose.

20 (2) The department shall make available to the unemployment compensation and workers'
21 compensation programs of the department of labor and industry all information contained in its files and records
22 pertaining to eligibility of persons for low-income energy assistance and weatherization. The information made
23 available must include information on the amount and source of an applicant's income. The information received
24 from the department must be used by the department of labor and industry for the purpose of determining fraud,
25 abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs
26 of the state and for no other purpose.

27 (3) (a) Subject to federal restrictions, the department may request information from the department of
28 labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If
29 the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers'
30 compensation, or occupational benefits, the department of labor and industry may request information from the

department of revenue pertaining to income ~~as provided in 15-30-303(8)(c).~~

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance."

Section 93. Section 67-11-303, MCA, is amended to read:

"67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds for those purposes, including refunding bonds, in the form and upon the terms that it may determine, payable out of any revenue of the authority, including revenue derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any is pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this section, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision, ~~within the meaning of 15-30-111(2)(a)~~ as defined in 2-9-101.

(5) For the security of bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection, the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it shall, subject to 15-10-420, levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it shall, subject to 15-10-420, levy a general tax upon all the taxable property in the municipality for the payment of the deficiency, and the taxes are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event that more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the municipalities may determine. The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. A resolution may not be effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor of the resolution. The special election must be held in conjunction with a regular or primary election. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the municipality may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section, but the municipality or authority may issue bonds under this chapter payable solely from the sources referred to in subsection (1)."

Section 94. Section 87-2-102, MCA, is amended to read:

1 **"87-2-102. Resident defined.** In determining whether a person is a resident for the purpose of issuing
2 resident hunting, fishing, and trapping licenses, the following provisions apply:

3 (1) (a) A member of the regular armed forces of the United States, a member's dependent, ~~as defined~~
4 ~~in 15-30-113~~, who resides in the member's Montana household, or a member of the armed forces of a foreign
5 government attached to the regular armed forces of the United States is considered a resident for the purposes
6 of this chapter if:

7 (i) the member was a resident of Montana under the provisions of subsection (4) at the time the member
8 entered the armed forces and continues to meet the residency criteria of subsections (4)(b) through ~~(4)(e)~~ (4)(d);
9 or

10 (ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana
11 for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course
12 approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a
13 hunter safety course in any state or province. The 30-day residence requirement is waived in time of war.
14 Reassignment to another state, United States territory, or country terminates Montana residency for purposes
15 of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and
16 dependents continue to physically reside in Montana and the member continues to meet the residency criteria
17 of subsections (4)(b) through ~~(4)(e)~~ (4)(d). The designation of Montana by a member of the regular armed forces
18 as a "home of record" or "home of residence" in that member's armed forces records does not determine the
19 member's residency for purposes of this section.

20 (b) A member of the regular armed forces of the United States who is otherwise considered a Montana
21 resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue
22 of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping
23 privileges in another state or country.

24 (2) A person who has physically resided in Montana as the person's principal or primary home or place
25 of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making
26 application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this
27 section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary
28 home or place of abode.

29 (3) A person who obtains residency under subsection (2) may continue to be a resident for purposes
30 of this section by physically residing in Montana as the person's principal or primary home or place of abode for

1 not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any
2 resident hunting, fishing, or trapping license.

3 (4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to
4 be considered a resident for purposes of this section:

5 (a) the person's principal or primary home or place of abode is in Montana;

6 ~~(b) the person files Montana state income tax returns as a resident if required to file;~~

7 ~~(c)(b)~~ the person licenses and titles in Montana as required by law any vehicles that the person owns
8 and operates in Montana;

9 ~~(d)(c)~~ except as provided in subsection (1)(b), the person does not possess or apply for any resident
10 hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or
11 trapping privileges in another state or country; and

12 ~~(e)(d)~~ if the person registers to vote, the person registers only in Montana.

13 (5) A student who is enrolled full-time in a postsecondary educational institution out of state and who
14 would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2)
15 or (3) is considered a resident for purposes of this section.

16 (6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days
17 within Montana, considered a resident for the purpose of making application for a fishing license as long as the
18 person remains an enrollee in a Montana camp.

19 (7) A person who does not reside in Montana but who meets all of the following requirements is a
20 resident for purposes of obtaining hunting and fishing licenses:

21 (a) The person's principal employment is within this state and the income from this employment is the
22 principal source of the applicant's family income.

23 ~~(b) The person is required to pay and has paid Montana income tax in a timely manner and proper~~
24 ~~amount.~~

25 ~~(c)(b)~~ The person has been employed within this state on a full-time basis for at least 12 consecutive
26 months immediately preceding each application.

27 ~~(d)(c)~~ The person's state of residency has laws substantially similar to this subsection (7).

28 (8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents,
29 legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this
30 section. The minor is considered a resident for purposes of this section regardless of whether the minor resides

1 primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be
2 required to show proof of the parental, guardianship, or custodial relationship to the minor.

3 (9) A person is not considered a resident for the purposes of this section if the person:

4 (a) claims residence in any other state or country for any purpose; or

5 (b) is an absentee property owner paying property tax on property in Montana.

6 (10) A license agent is not considered a representative of the state for the purpose of determining a
7 license applicant's residence status.

8 (11) (a) For purposes of this section, the term "dependent" means any of the following individuals over
9 half of whose support, for the calendar year for which residency is at issue, was received from the resident on
10 whom the dependent depends:

11 (i) a son or daughter of the resident or a descendant of either;

12 (ii) a stepson or stepdaughter of the resident;

13 (iii) a brother, sister, stepbrother, or stepsister of the resident;

14 (iv) the father or mother of the resident or an ancestor of either;

15 (v) a stepfather or stepmother of the resident;

16 (vi) a son or daughter of a brother or sister of the resident;

17 (vii) a brother or sister of the father or mother of the resident;

18 (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the
19 resident;

20 (ix) an individual who, for the calendar year in which residency is at issue, has as the individual's
21 principal place of abode the home of the resident and is a member of the resident's household; or

22 (x) an individual who:

23 (A) is a descendant of a brother or sister of the father or mother of the resident;

24 (B) for the calendar year in which residency is at issue received institutional care required by reason
25 of a physical or mental disability; and

26 (C) before receiving institutional care, was a member of the same household as the resident.

27 (b) For purposes of this section:

28 (i) the terms "brother" and "sister" include a brother or sister by the half blood;

29 (ii) in determining whether any of the relationships specified in this section exist, a legally adopted child
30 of an individual must be treated as a child of the individual by blood."

1

2 **Section 95.** Section 87-2-105, MCA, is amended to read:

3 **"87-2-105. Safety instruction required.** (1) A hunting license may not be issued to a resident person
4 who is under 18 years of age unless the person authorized to issue the license receives a certificate of
5 completion from the Montana youth hunter safety and education course established in subsection (5).

6 (2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless
7 the person authorized to issue the license receives a certificate of completion from the Montana youth hunter
8 safety and education course established in subsection (5) or a certificate verifying that the nonresident has
9 successfully completed a hunter safety course in any state or province.

10 (3) A hunting license may not be issued to a member of the regular armed forces of the United States
11 or to a member of the armed forces of a foreign government attached to the armed forces of the United States
12 who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to
13 a member's dependents, as defined in ~~15-30-113~~ 87-2-102, who reside in the member's Montana household,
14 unless the person authorized to issue the license receives proof of completion of a hunter safety course
15 approved by the department or a certificate verifying that the member or dependent has successfully completed
16 a hunter safety course in any state or province.

17 (4) A bow and arrow license may not be issued to a resident or nonresident unless the person
18 authorized to issue the license receives an archery license issued for a prior hunting season or receives proof
19 of completion of a bowhunter education course from the national bowhunter education foundation. Neither the
20 department nor the license agent is required to provide records of past archery license purchases. As part of
21 the department's bow and arrow licensing procedures, the department shall notify the public regarding
22 bowhunter education requirements.

23 (5) The department shall provide for a youth hunter safety and education course that includes instruction
24 in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as
25 one of its objectives the promotion of hunter safety and education. The department may designate as an
26 instructor any person it finds to be competent to give instructions to youth in hunter safety and education,
27 including the handling of firearms. A person appointed shall give the course of instruction and shall issue a
28 certificate of completion from Montana's youth hunter safety and education course to a person successfully
29 completing the course.

30 (6) The department shall provide for a course of instruction from the national bowhunter education

1 foundation and for that purpose may cooperate with any reputable organization having as one of its objectives
2 the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor
3 any person it finds to be competent to give the national bowhunter education foundation instruction. A person
4 appointed shall give the course of instruction and shall issue a certificate of completion from the national
5 bowhunter education foundation to any person successfully completing the course.

6 (7) The department may develop an adult hunter education course.

7 (8) The department may adopt rules regarding how a person authorized to issue a license determines
8 proof of completion or achievement."
9

10 **Section 96.** Section 87-5-121, MCA, is amended to read:

11 **"87-5-121. Nongame wildlife account.** (1) There is a nongame wildlife account in the state special
12 revenue fund provided for in 17-2-102.

13 (2) All ~~money collected under 15-30-150 and all~~ interest earned by the fund before being expended
14 under this section must be deposited in the account.

15 (3) Money in the account must be used by the department, upon the approval of the commission as
16 determined under 87-5-122, to provide adequate funding for:

17 (a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

18 (b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as
19 species or subspecies in need of management.

20 (4) The money is available to the department in the same manner as provided in 87-1-601, ~~except that~~
21 ~~money collected under 15-30-150 may not be used:~~

22 ~~—— (a) for the purchase of any real property; or~~

23 ~~—— (b) in such a way as to interfere with the production on or management of private property."~~
24

25 **Section 97.** Section 90-8-202, MCA, is amended to read:

26 **"90-8-202. Designation of qualified Montana capital companies -- designation of qualified**
27 **Montana small business investment capital company -- tax credit.** (1) The department shall designate as:

28 (a) qualified Montana capital companies those certified companies that have been privately capitalized
29 at a minimum level of \$200,000; or

30 (b) a qualified Montana small business investment capital company a certified Montana small business

1 investment capital company once it has been privately capitalized at a minimum level of \$500,000.

2 (2) A certified company seeking designation as a qualified Montana capital company or as a qualified
3 Montana small business investment capital company shall make written application to the department on forms
4 provided by the department. The application must contain the information required by 90-8-204 and other
5 information that the department requires.

6 (3) (a) The total amount of tax credits authorized for a single qualified capital company or a qualified
7 Montana small business investment capital company may not exceed \$1,500,000, except that a qualified
8 Montana small business investment capital company must receive all remaining tax credits under this section
9 available as of January 1, 1991. In the event the capitalization of a qualified capital company is later increased,
10 the company may apply for authorization of additional tax credits within the foregoing limitation.

11 (b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30,
12 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed
13 \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to
14 qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989,
15 may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that
16 is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and
17 June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June
18 30, 1989, that is allocated to qualified companies.

19 (4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that
20 completed applications for designation as qualified capital companies are received by the department, and the
21 department shall certify to each company its appropriate allocation.

22 (b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be
23 allocated to a qualified Montana small business investment capital company, and the department shall certify
24 the allocation to the company.

25 (c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax
26 credits become available by reversion to the department by a capital company or by a qualified Montana small
27 business investment capital company, those additional or reverted tax credits must be allocated by the
28 department to qualified capital companies or to a qualified Montana small business investment capital company
29 in accordance with this chapter and the rules of the department.

30 (5) Investors in a qualified Montana capital company or in a qualified Montana small business

investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as a qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as a qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied to a qualified small business investment capital company, the maximum tax credit is \$250,000 per taxpayer and the tax credit limitation relating to a capital investment in a qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter ~~30~~, 31, or 35. The credit for investments by a small business corporation defined in 15-30-1101 or a partnership may be claimed by the small business corporation shareholders or the partners.

(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's corporation license or income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company or a qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in a qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) ~~An individual,~~ A small business corporation, partnership, or corporate taxpayer who obtains the

1 tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6)
2 by making investments as more than one entity.

3 (b) A partner or shareholder in a small business corporation may not obtain more than \$150,000, or not
4 more than \$250,000 in the case of a qualified Montana small business investment capital company, in credits
5 as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the
6 maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by
7 wholly owned subsidiaries or affiliates. ~~An individual, A~~ small business corporation, partnership, or corporate
8 taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions
9 of Title 15, chapter ~~30 or~~ 31, for donation of stock in a qualified Montana small business investment capital
10 company."

11
12 **NEW SECTION.** **Section 98. Repealer.** Sections 2-18-1312, 15-1-230, 15-1-231, 15-30-101,
13 15-30-102, 15-30-103, 15-30-105, 15-30-106, 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113,
14 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-124, 15-30-125,
15 15-30-126, 15-30-127, 15-30-128, 15-30-129, 15-30-130, 15-30-131, 15-30-132, 15-30-134, 15-30-135,
16 15-30-136, 15-30-137, 15-30-138, 15-30-141, 15-30-142, 15-30-143, 15-30-144, 15-30-145, 15-30-146,
17 15-30-147, 15-30-148, 15-30-149, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-155, 15-30-156,
18 15-30-157, 15-30-161, 15-30-162, 15-30-165, 15-30-166, 15-30-167, 15-30-168, 15-30-171, 15-30-172,
19 15-30-173, 15-30-174, 15-30-175, 15-30-176, 15-30-177, 15-30-178, 15-30-179, 15-30-180, 15-30-181,
20 15-30-186, 15-30-188, 15-30-189, 15-30-190, 15-30-191, 15-30-192, 15-30-201, 15-30-202, 15-30-203,
21 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-208, 15-30-209, 15-30-210, 15-30-215, 15-30-241,
22 15-30-247, 15-30-248, 15-30-249, 15-30-250, 15-30-251, 15-30-255, 15-30-256, 15-30-257, 15-30-301,
23 15-30-302, 15-30-303, 15-30-304, 15-30-305, 15-30-306, 15-30-307, 15-30-310, 15-30-311, 15-30-312,
24 15-30-313, 15-30-314, 15-30-316, 15-30-321, 15-30-323, 15-30-324, 15-30-331, 15-30-601, 15-30-602,
25 15-30-603, 15-30-604, 15-30-605, 15-30-1111, 15-31-170, 15-32-109, 15-32-115, 15-32-201, 15-32-202,
26 15-32-203, 15-61-202, and 15-62-207, MCA, are repealed.

27
28 **NEW SECTION.** **Section 99. Transition.** Beginning on [the applicability date of this section], the
29 department of revenue may:

30 (1) promulgate rules for implementing and administering the sales tax and use tax provided for in

[sections 1 through 20];

(2) provide for the repeal of the individual income tax; and

(3) proceed with activities that will result in the state of Montana becoming a signatory of the Uniform Sales and Use Tax Administration Act provided for in [sections 13 through 20].

NEW SECTION. Section 100. Codification instruction. (1) [Sections 1 through 20] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 20].

(2) Sections 15-30-163, 15-30-164, 15-30-246, 15-30-1101, 15-30-1102, 15-30-1112, 15-30-1113, 15-30-1114, and 15-30-1121 are intended to be renumbered and codified as an integral part of Title 15, chapter 31.

NEW SECTION. Section 101. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 102. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 103. Applicability. (1) Except as provided in subsection (2), [this act] applies on passage and approval.

(2) (a) [Sections 1 through 12] apply to sales of services and tangible personal property after December 31, 2003.

(b) [Sections 13 through 20] apply on and after July 1, 2003.

(c) [Sections 21 through 98] apply to calendar years, tax years, and fiscal years beginning after December 31, 2003.

- END -